

VIOLENCE AND STATE RESPONSE IN THE REIGNS OF AUGUSTUS AND TIBERIUS

by

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ABSTRACT

This thesis examines the concept of violence during the transition from Republic to Principate. Many of the provisions against violence which evolved during the course of the reigns of Augustus and Tiberius were a direct response to the violence of the Late Republic. They were to a large extent, new and revolutionary, but were not caused by the violence of the Late Republic: rather they were developed as part of the new political scenario to stabilise Roman society and secure the *princeps*' position.

A by-product of these measures was to provide a new context in which violence (particularly institutionalised state violence) could occur, be monitored and controlled.

In chapter one I attempt to define violence and to extract the contemporary Roman attitude, without which any conclusions drawn would be inaccurate and unrealistic. I have used Roman legislation - especially the *lex Julia de vi* (c 18 BC) and have examined the works of Cicero for the frequency and function of *vis*, the Latin word which most closely corresponds to the English word "violence." I conclude that the Romans had a sophisticated understanding of the concept: i) anything that was not conducted through the due process of law was considered *vis*, ii) violence was tolerated only in exceptional circumstances, when state security was threatened.

In chapter two I explore in greater detail the attempts by government to legislate against violence in particular the *lex Julia de vi* and the *lex maiestatis*. Although the latter was not employed initially to remove political rivals from the scene, its abuse during the reign of Tiberius became one of the great themes of the historians to illustrate the decline and moral bankruptcy of the Principate and to look nostalgically at the Republic.

Chapter three examines how the structure of the Roman criminal system changed, the gradual disintegration of the legal principle of self-help, and the growth and exploitation of the *cognitio* procedure in Roman courts. The state intruded more into the lives of citizens

and therefore exerted more control. The role of three new jurisdictions, imperial, senatorial and that of the urban prefect, in the context of the minimisation and control of violence, is also discussed.

The fourth chapter deals with punishment and considers the theory that there was a trend to greater severity in this form of state violence. It examines, against the background of Roman penal aims, the evolution of the symbols and rituals which accompanied different types of punishment.

Chapters five and six discuss collective violence, its manifestations and explain the absence of revolution by the *plebs*. The introduction of new forces into the city (something which was anathema in the Republic) is discussed in the context of policing and law and order. They had a significant impact in the limitation of violence.

In the Early Principate violence manifested itself in new contexts and was controlled more effectively than in the Late Republic.

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VIOLENCE

THE PROBLEM OF VIOLENCE - DEFINITION AND APPROACH.

INTRODUCTION

Investigating violence is immediately problematic. To undertake such a task without prejudice and preconception is particularly difficult because violence is defined both morally and subjectively. Complete objectivity where violence is concerned is impossible, to attain. Consequently, it is dangerous to arrive at absolute conclusions too hastily. Wrong and misleading judgements are easily made, especially when investigating one civilization from the perceptions and attitudes of another. A late twentieth century observer would, in accordance with western Judaeo-Christian principles, find the executions in the amphitheatre in the first century AD violent, cruel and morally repugnant. Yet it was only in the 1930s that public execution by guillotine was abandoned. It is this very kind of paradox and irony which complicates objective investigations into violence and can render any conclusions attained unrealistic and misleading because modern perceptions and attitudes have been superimposed onto an ancient context.¹ Two specific problems must be addressed right at the outset of this investigation.

The first is one of definition. This is difficult, since we are dealing with an abstract concept. A modern lexicographical definition can provide a departure point and assist in establishing a basis of approach to this issue. *The Oxford English Dictionary* definition of violence is: 'the exercise of physical force so as to inflict injury or cause damage to persons or property. Action or conduct characterised by this. Treatment or usage tending to cause bodily injury forcibly interfering with personal freedom; undue constraint applied to some natural process, habit etc. so as to prevent its free development or exercise.' This definition is not, however, to be adhered to absolutely. Although too narrow a definition can be both fallacious and inaccurate, we can extract from this elements which can be applied to each instance of violence. Physical force is the first element. This need not

¹ Labruna at 3-7, considers the anxiety of overcoming the multiple contradictions and tensions within the subject of violence which are caused by the precariousness of the cultural and historical moment in which we live and the differences in standards of value as an increasingly deepening crisis of approach which both modern and classical scholarship has failed to address satisfactorily.

actually materialize, but there should be at least the situation where such physical force is either possible or potential and where the second element, that is injury or damage, may realistically result. Injury or damage need not take a material or physical form. It is sufficient that there is the fear of its realisation. 'I include in violence a dire threat, even if it does not materialize.'² The third element is the victim of damage or injury, whether to person or property. The dynamics of violence can be formulated thus: there must be a cause, a method, and effect of violence employed by an agent and exercised upon a victim. There is also the dimension of violence as the forcible interference in a natural process. This will become clearer when a definite relationship is postulated between the extent of violence and social instability on the one hand, and the control and minimisation of personal and political freedom on the other.

At this point a basic distinction must be drawn between the concepts of "violence" and "force". Because violence often involves physical force, the connection between "force" and "violence" is very close and in some contexts the words become synonyms.³ In this distinction lies a means by which the difficult issue of violence can be understood. "Violence" is a loaded concept because it involves negative and hostile connotations, whereas "force" does not necessarily have these connotations and is therefore more problematic. But the distinction affords particular relevance to this study because the Romans used the same word, *vis*, to denote both concepts. When these two concepts are used, other factors are introduced which assist us in understanding violence as a social phenomenon and in defining its role in the context of the structure of society. It is not enough, therefore, to claim (as Georges Sorel⁴ did in 1908) that force is used by the state to maintain the existing social order, while violence is used to undermine it. The danger in accepting "force" as state coercion and "violence" as coercion by other agencies, is that it embodies a highly questionable presumption about the nature of state and society which inhibits any chance of understanding the complex issues involved in their relationship. This distinction assumes that state coercion is legitimate. In these terms violence is not only a

² Daube, 123.

³ Cf. Garver, 819.

⁴ Sorel, 175.

social but also a political phenomenon. For Macfarlane,⁵ political violence is essentially a denial of the legitimacy of the state either in itself, or in its workings. In this study I shall argue that the relationship between the state and its subjects had a profound effect on the character of the violence evident in the reigns of Augustus and Tiberius, and that the efforts at securing legitimacy made by the emperors played an important role in achieving this character.

The sociologists Graham and Gurr⁶ shed further light on the distinction between "force" and "violence". Violence is 'behaviour designed to inflict physical injury to people or damage to property,' while force is 'the actual or threatened use of violence to compel others to do what they might otherwise not do.' Thus force and violence are interlinked because the former involves a threat if not the actuality of violence while the latter is forceful if it is used to change others' actions. But this can also be considered narrow. Nieburg⁷ distinguishes force from violence by contrasting capacity to act and action. For him force is the reserve capability and means of exercising physical power which in political society amounts to the threat of violence or counter-violence. Violence is therefore simply "force in action." The two concepts merge imperceptibly since violence is necessary on occasion to give credibility to its threatened use which is the basis of force. For Garver,⁸ violence in human affairs amounts to the violation of persons which occurs in four different forms based on two criteria, whether the violence is personal or institutionalized, and whether the violence is overt or covert. He writes, however, in the modern context of a culture of rights which cannot be imputed to ancient society.

In these definitions, however, there is little attempt to relate the concepts of force and violence to those of authority and legitimacy. Wolff⁹ has tried to show that when these fundamental issues are introduced, the concept of violence can be shown to lack any coherent meaning. He distinguishes between "power" as the ability to make and enforce

5 41.
 6 Graham and Gurr, xxxii.
 7 10-15.
 8 819.
 9 602-606.

decisions of social importance, and "authority" as the *right* to make such decisions; between *de facto* authority as the *ability* to get one's right to make decisions accepted, and *de iure* authority as the substantiated right to command and be obeyed. For Wolff force is the 'ability to effect change through physical effort, and violence is the illegitimate or unauthorised use of force to effect decisions against the will or desire of others.' Violence in Rome must be understood also within the context of state power which 'is unique, overriding all other "powers" within the society by its acknowledged right to exercise force, even to kill, when its representatives deem such action to be necessary (and also legitimate where the rule of law prevails).'¹⁰

It is important to take into account both the notion of legitimacy and the conflicting claims often made to it; the commonly held distinction between force and violence, once made, pivots on the legitimacy or acceptability of the actions concerned. This is not to say that the benefit of legitimacy should be given to established authorities. Macfarlane,¹¹ considering all the factors mentioned above, offers a definition of the two terms which I shall use as a basis for my approach to the subject: 'violence is the capacity to impose, or the act of imposing, one's will upon another, where the imposition is held to be illegitimate. Force is the capacity to impose, or the act of imposing, one's will upon another, where the imposition is held to be legitimate.' It must be stressed though, that each aspect of the definition is vulnerable to wide interpretation.

The second problem to be addressed is one of attitude. It can be argued that attitudes to violence as well as what constitutes violence have indeed changed over the centuries. This must be contrasted with the unobjectionable use of force. The use of moral terminology to which the concept of violence is susceptible, runs the risk of inaccurate and unrealistic conclusions, and must therefore be guarded against. A higher value is theoretically placed on human life today than was two thousand years ago.¹² Today, executions are clinical affairs where the primary purpose is to despatch the "victim" across the Styx as quickly

¹⁰ Finley, 8.

¹¹ 46.

¹² See Auguet, on his chapter on Roman Cruelty, at 9. '...the life of a man has not always had the value that our own morality strives to give it.'

and as mercifully as possible. They are carried out as a final resort, usually a considerable time after the crime and far from the public eye, or at least before a vigorously controlled audience. Such consideration and humanity was not usually shown to the condemned of the ancient world. It is pertinent, then, when embarking on a study into the violence of the Early Principate, to echo Lintott's caveat: 'the ethical standards common to the Hellenised Mediterranean world did not place such a high value on human existence in itself as ours do now. Arguments based on a catalogue of cruelties are, therefore, liable to prove no more than that the Romans had standards scarcely different from those of their contemporaries who were not plagued by such political violence. However suggestive the facts might appear, we need as much light as possible on the attitudes to them if we are to attribute Roman political violence to a defect of character as well as of intellectual judgement of interests.'¹³

VIOLENCE AND THE EARLY PRINCIPATE.

Why investigate violence of the Early Principate? MacDonald, reviewing Lintott's book, expresses the validity of such a pursuit in general terms: 'civic violence, wherever it breaks out, draws attention dramatically to itself and invites far reaching speculation as to its causes ranging from original sin or human aggressiveness to atavistic irrationalism or, at least, social restiveness. This is a proper exercise providing it uses comparative knowledge and experience.'¹⁴

This study will proceed on the premise that the Rome of Augustus and Tiberius was experiencing a transition from Republic to Principate which was not complete but evolutionary. The Republic had died. Tacitus could assert that very few had ever seen truly Republican government.¹⁵ The Late Republic had seen much violence. 'A violent and tumultuous era is the standard description of the Ciceronian age. Certainly it had its fair

¹³ Lintott (1968), 36.

¹⁴ 239.

¹⁵ *Ann.* 1.3.7-4.1: 'quotus quisque reliquus qui rem publicam vidisset? Igitur verso civitatis statu nihil usquam prisci integri moris: omnes exuta aequalitate iussa principis aspectare, nulla in praesens formidine, dum Augustus aetate validus seque et domum et pacem sustinavit.'

share of disruption - more than its fair share.'¹⁶ Nowhere was violence more evident than in government. 'To speak of Roman politics in the Late Republic without touching on violence would hardly be possible.'¹⁷ Thus Lintott argues that 'violence played such an important part in Late Republican politics that it became more than a symptom of other disturbances, but rather a disease itself which made its own contribution to the fall of the Republican government.'¹⁸

The Roman society of the Early Principate grew out of the political turbulence of the Late Republic. Although Augustus stressed continuity with the past,¹⁹ the political and military reality was of domination by one man. The structures of the old system had acquired a new level of control above them, and the decay of a once vigorous political system and the trauma of half a century of civil strife had taken their toll. In short, from the time of the Gracchi to the battle of Actium violence characterized the Roman Republic. When peace finally came, Augustus was able to state self-righteously that while he was *princeps* the doors of Janus were closed three times.²⁰ Tacitus could write with some justification that Augustus 'cunctos dulcedine otii pellexit'.²¹ In a professed context of peace and stability, then, what is the need to consider violence?

This context of peace and stability hinged on one critical factor: the acceptance and approval of Augustus' government. After Actium the theatre of political activity moved from within the ambit of strict constitutional rules to a more fluid and less formal, and consequently more unstable and more unpredictable, context. The implications for violence in this respect are great. Shaw explains the problem: 'a major problem in Roman history is the role of violence in the making of Roman society, and in particular the relationship between individual men who wielded violent force and the Roman state. This is a difficult question because it necessarily entails consideration of the corollary problems of political

¹⁶ Gruen, 405.

¹⁷ Sherwin-White, 1. See also Smith, 257-73.

¹⁸ Lintott (1982), 11.

¹⁹ On Augustus as link between Republic and Principate see Eder, 71-122.

²⁰ *R.G.* 2.13

²¹ *Ann.* 1.2.1.

legitimacy and the practical exercise of power.²² Whether the state exercises violence explicitly, for example, in a whiff of grapeshot, or merely through threat of force, it must nevertheless do so legitimately. The state's legitimacy rests on the manner in which force (or violence) is employed. The political philosopher Max Weber perhaps explains it best when he says that the state is meant to exercise political power and that power is maintained through force and violence. However, defending the right of the state to use force, he says that the state as a political structure upholds a claim to the monopoly of the legitimate use of physical force in the enforcement of its order.²³ Thus the state, or any official of the state who commits violence must do so within the *potestas* given by the constitution. In the Roman context a distinction must be drawn between *potestas* and *potentia*. *Potestas* means power in political, legal or quasi-legal contexts. It is official power, whereas *potentia* is the ability to exercise control, power or influence over others. Cicero defines power (*potentia*), in cold blooded and mercenary terms: 'potentia est ad sua conservanda et alterius attenuanda idonearum rerum facultas.'²⁴ It is a distinction which indicates the condition of Roman politics and life at the time. These perceptions go a long way in clarifying an attitude to violence of the period.

There are two essential questions which this study will endeavour to address. Firstly, to consider the Roman definitions of violence during the period of Augustus and Tiberius and whether these attitudes evolved in response to the new social and political context. If their attitudes to violence were hostile, how did they articulate their hostility? Secondly, what role did violence play, and how did it make itself evident, in the years of evolution from Republic to Principate?

I will begin by setting the background to the Early Principate. This is necessary because much of the violence which occurred during the Early Principate had its roots in the Late Republic. For example, it can be argued that Roman penal law evolved from a controlled system in the Republic to one characterized by arbitrariness and savagery under the

²² Shaw, 3.

²³ Weber, 407.

²⁴ *Inv.* 2.169. *Potentia* is later considered one of the 'extraneae virtutes' (*Inv.* 2.177)

Empire. I shall argue, as Garnsey does, that the increase in severity in penalties is explained in terms of the substitution of monarchy for Republican aristocratic government, and the absolutist tendencies of the monarchy.²⁵

Also, the study will consider ways in which violence manifested itself. Brigandage, for example, was such a problem that both Augustus²⁶ and Tiberius²⁷ were forced to deal with it. Also, riots and public disorder, whatever the cause, were not uncommon and a serious threat to public security. Both Augustus²⁸ and Tiberius²⁹ were required to quell violent situations by violent means. Moreover, the circus, which itself accommodated violence on an increasing scale in the Early Principate, was also the source of major social disturbance. The stage, arena and circus were regular scenes of violence³⁰ and Augustus appreciated both its dangers and its essential place in the Roman social and political world. There is also the prevalence of crime in Rome to deal with, and how authority sought to contain it. The study will consider the stationing of military or quasi-military bodies such as the praetorian cohorts, the urban cohorts and the *vigiles* as forces of law and order with the specific brief of protecting the emperor, maintaining law and order in the capital and preventing fires. These bodies were all creations of the Early Principate.

VIS AND THE LATE REPUBLIC.

Through a contemporary Roman definition of violence we will gain a better understanding of their attitude to the subject and be able to discuss the role (if any) it had in the politics and society of the Early Principate. Here the question must be approached in terms of language, by isolating Roman terms for violence, discussing the variety of uses of these terms and the different contexts in which they appear. The investigation will concentrate specifically on the word *vis*, which will be examined from two perspectives. Firstly, the evolution of the *leges de vi* will be sketched in order to appreciate the Romans' legal and political perception of a problem which first demanded legislative attention in the 70s BC

25 Garnsey (1968), 141. This will be considered in more detail in chapter 3.
 26 Suet. *Aug.* 32.1.
 27 Suet. *Tib.* 37.1.
 28 Suet. *Aug.* 19.1.
 29 Suet. *Tib.* 37.1-2.
 30 Tac. *Ann.* 1.77.1

and was never resolved properly, and which eventually required extra-legislative measures and an unprecedented intrusion in the life of the citizen by the state. The role of *vis* in the legal notion of self-help is of particular importance. Secondly, the study will examine the wider context of *vis* through non-legal usage, to establish a social perception of violence. In this Cicero's testimony will prove invaluable.

How did the Romans of the Late Republic and Early Principate express and articulate the concept of violence? *Vis* is the word which will enjoy most of our attention in this respect. Ironically, although there is evidence of its use in Early Republican literature,³¹ *violentia* is found mostly in the Later Empire and very rarely in the works of the Late Republic or Early Empire.³² *Violentus* is the oldest form and is used most regularly, and another adjectival form, *violens*, appears in Horace³³ and Persius.³⁴ The adverbial form *violenter* is attested from Terence.³⁵ Ernout points out the obvious connection between *vis* and *violare* but recognizes that the formation of the verb is obscure.³⁶

Vis, though, has several meanings attached to it. They include abundance, importance, essence, quantity. We are principally concerned, however, with the predominant meaning of the word in the context of force, violence, power, lawlessness etc. Ernout and Meillet gloss *vis* as 'force, en particulier force exercée contre quelqu'un.'³⁷ Daremberg and Saglio add the dimension seen also in the *Oxford English Dictionary* definition, that of interference in, or operation against, the will or natural process: 'dans le droit Romain le mot *vis* signifie d'abord en general tout acte accompli contre la volonté d'une personne.'³⁸ This is expressed by the Realencyclopädie as *Willensmangel* - thwarting of the will through *vis* - which is one part of a five part analysis of *vis* under the general classification

³¹ Plaut. *Men.* 330; *Rud.* 839.

³² Cicero uses *violentia* only four times in his speeches and philosophical works, while in Livy it only occurs ten times. It appears twice in Seneca the Elder, four times in Seneca, twice in Suetonius and fifteen times in Tacitus. *Vis* is by far the most prominent word denoting force and violence.

³³ *Carm.* 3.30.10.

³⁴ Pers. 5.171.

³⁵ Ernout, 97-98.

³⁶ Ernout, 100.

³⁷ Ernout and Meillet, 1072.

³⁸ C. Daremberg and M. Saglio, *Dictionnaire des Antiquités Grecques et Romaines*, (Paris), 5. 927.

juristische Begriff.³⁹ The others are *vis* and *ius*; *vis* as self-help; *vis* in interdicts; criminal and penal measures against *vis*; and *vis maior*, which has a similar meaning to *vis divina* and suggests force of a supernatural or divine nature.

From this *juristische Begriff* we will begin the search for a Roman contemporary definition of, and attitude to, violence. Since the law is a mechanism for the regulation of the affairs of society in general, and the control of violence in particular, a legal definition is one response to the problem. Violence threatens not only the community, but it also attacks those who seek to control it. Against this background the relationship between law and violence is clear. The greater the regulation of society's affairs through law and the stricter the mechanisms for the control of violence, the more insecure the law-giving class or agency, the more unstable is the society it seeks to govern through those laws. This is inevitably so, since the natural process of society and its free development will have been interfered with. There is therefore a strong relationship between *vis* and *ius* which can be understood more clearly when considered against the background of self-help.

Self-help is a vital aspect of the resolution of disputes in Roman criminal and civil law.⁴⁰ Lintott considers that there are two 'principal aspects of the relationship of violence to the law: the acceptance and even prescription of, self-help by the law. Secondly, the assumption by the law of the procedure characteristic of self-help. Both of these aspects occurred in Rome and are significant for the Roman attitude to violence, the first for obvious reasons, the second, because the formalisation of self-help in processes like the *legis actio per manus iniunctionem* and *vindicatio* shows the intimate connection between *vis* and *ius* that existed in the foundations of Roman law.'⁴¹ Lintott continues to say 'self-help goes beyond mere self defence, it is the unilateral assertion of a personal right without appeal to the power of the judiciary.'⁴² Cicero shows how this concept was practically expressed: 'atqui, si tempus est ullum iure hominis necandi, quae multa sunt, certe illud est

³⁹ RE. IX.9. 311.

⁴⁰ See also chapter 2, p41ff.

⁴¹ Lintott (1968), 22.

⁴² Lintott (1968), 23.

non modo iustum verum etiam necessarium, cum vi vis inlata defenditur.⁴³ However, for Lintott *vis* was a 'neutral concept closer to our "force" than "violence", so there was no difficulty applying it to both illegal violence and legal self help.'⁴⁴

The Romans of the Late Republic, occupied themselves principally with violence as it affected public affairs. Labruna's position is that it was not until the Late Republic that Roman society attributed to *vis* a negative judicial emphasis in either public or private law.⁴⁵ This emphasis found expression in the formalisation of the concept of violence in the Late Republic which took a political form in that it dealt with violence as it affected the state directly. Even so it only did so because it had no other choice. What occurred between individual citizens beyond the parameters of politics and government held no interest for those in authority. There would come a time however, when the state was so insecure that it felt it could not function properly without reaching significantly into the lives of individual citizens and regulating their affairs. This feeling of insecurity stems directly from the prevalence of violence in the Late Republic and Early Principate. The legislation *de vi* was the beginning of this trend of intrusion.

The measures introduced in the first half of the first century BC attempted to define violence (qualified in its various attributes as *vis*) or to address effectively the preceding dispositions which were shown to be inadequate for the 'iniquitas temporum.'⁴⁶ It was certainly during these years that the concept of *vis*, understood as illicit violence, affirmed itself in an all-powerful manner. By the 70s BC the problem of violence could no longer be avoided and specific legislation against *vis* began to appear.⁴⁷ Between 78 and 76 measures were taken after the revolt of Lepidus to put an end to brigandage of all sorts and two penal laws were passed against all blows struck against the public peace by bands of brigands. The one action, the product of M. Terentius Varro Lucullus, created the private delict of *rapina* for moveable property and the private penal action *vi bonorum raptorum*.

⁴³ *Mil.* 9

⁴⁴ Lintott (1968), 22-23.

⁴⁵ Labruna, 10-14.

⁴⁶ Cic. *Tull.* 46. See also Labruna, 13-14.

⁴⁷ A full discussion of the *leges de vi* appears in chapter 2, p56ff.

The other action, the *lex Plautia de vi*,⁴⁸ was probably presented by the tribune M. Plautius Silvanus and can be identified with a law on the same subject which is attributed by Cicero to Q. Lutatius Catulus,⁴⁹ and also with the law which, after the death of Lepidus, pardoned his partisans in order to re-establish public harmony. Later this law was applied many times, against Catiline and his accomplices,⁵⁰ against Milo and his colleagues, against P. Sestius in 57,⁵¹ and against M. Caelius Rufus and M. Tuccius.⁵² In 52 BC a special law *de vi* of Pompey was tabled concerning the subject of the murder of Clodius.

The next laws *de vi* are *leges Juliae de vi publica et privata*.⁵³ Cloud⁵⁴ argues convincingly that there were two *leges Juliae de vi*, both of which were unitary; that is, they covered in one *lex* both what was later defined as *vis publica* and *vis privata*. The one was the work of Caesar while the other was the product of Augustus probably between 19 and 16 BC. Cloud also argues that the distinction between *vis publica* and *vis privata* was not evident in the Augustan law, but was in fact the creation of classical jurisprudence.⁵⁵ This distinction is not entirely clear. The first category covered going armed in public or having an armed gang, even without further action, as well as offences of violence such as rape; it also included abuses of power by a magistrate or official.⁵⁶ *Vis privata*, on the other hand included violence by unarmed gangs, other offences of violence and self-help where one should have used due process of law.⁵⁷ The praetor also issued edicts *de vi* and *de vi armata* and here, at least sticks and stones were interpreted as arms.⁵⁸

This brief history of *vis* legislation is important. The frequency of the laws - five within

⁴⁸ Quintilian *Inst.* 9.3.56.

⁴⁹ *Cael.* 70.

⁵⁰ Cic. *Sulla* 33; Sallust *Cat.* 31.4.

⁵¹ Cic. *Sest.* 75, 80.

⁵² See Cic. *Fam.* 8.8.1; *Cael.* 1; 70.

⁵³ See *Dig.* 48.6 and 48.7.

⁵⁴ See Cloud (1988), 594 and also Cloud (1987), 82-85.

⁵⁵ Cloud (1988), 587.

⁵⁶ *Dig.* 48.6.7.

⁵⁷ *Dig.* 48.8.

⁵⁸ *Dig.* 43.16.3.2.

sixty years - suggests an inability to deal effectively with the problem as well as an increasing insecurity on the part of the governing class. Also the distinction between *vis publica* and *vis privata* is indicative of the jurisprudential and the political thought on the subject, albeit the thought of over a century and a half later. Moreover, the fact that the Augustan law was retained in its basic form, although subject to later minor modifications, reflects the relative completeness of the statute.

Because of the tralatitancy nature of Roman law, we are justified in deriving from the Augustan law the first formal, legal and contemporary definition of *vis* in the *lex Julia de vi privata*:⁵⁹ 'et cum Marcianus diceret "vim nullam feci"; Caesar dixit: "tu vim putas esse solum si homines vulnaretur? Vis est et tunc, quotiens quis id quod deberi sibi putat non per iudicem reposcit. Non puto autem nec verecundiae, nec dignitati, nec pietati tuae convenire quicquam non iure facere.' This passage is important for an understanding of Roman attitudes to violence. Firstly, the definition as a whole is very broad betraying a similarly broad understanding of violence and reflecting also the Roman fear of an ingrained tendency to violence. Secondly, it confirms that for the Romans physical damage is not a necessary or essential element of violence. Thirdly, it shows the deep respect the Romans had for law, the rule of law and the process of the courts, which the Romans saw as both natural and good. Thus anything which interfered with this process was considered violent. In addition this definition places *vis* in contrast to the great Roman *virtutes* of *verecundia*, *dignitas* and *pietas*.

Although the law reflects society's needs and attitudes, violence cannot be viewed in the legal context only. This is less true of the governed class than it is of the governing class especially in the context of political legislation such as the *leges de vi* when legislation is the attempt to formalise, with a view to controlling, something which is a threat not only to the orderly functioning of society generally, but more particularly to the interests of the law-giving class. Consequently when a state seeks to legislate against violence it is really attempting to guarantee and entrench its own position. Those who deplore violence loudest,

⁵⁹ *Dig.* 48.7.7.

most publicly and most self-righteously are usually those who wish to maintain the *status quo*.⁶⁰ Thus the language of the legislation will reflect the interests of the law-giving class, and the definition handed down in that legislation will be an attitude to violence as formulated by the law-giving class only. It may well be completely opposite from the way in which other classes may perceive or define violence. This is particularly true of Rome. As the nature of the evidence prevents us from being able to establish a general social attitude to violence, we are left with an attitude which is for the most part that of the upper class. We can, however, search beyond the parameters of the law to ascertain a social attitude to violence. This will come down to us through the language that was used in a non-legal context. In this respect Cicero is well-placed to give clarity to a contemporary attitude to violence. His position in Roman politics, his profession as lawyer, his interest in philosophy and even his status as *novus homo* make him so. It is precisely because he makes the bridge between law and philosophy that we are able to divine an attitude to violence that is not merely legal, or political, but philosophical and therefore societal. Nevertheless, there remains the need to separate the philosopher from the orator. While Cicero understands full well the legal and political ramifications of violence, in his speeches and philosophical works he often reaches beyond these boundaries of the legal and political to dwell on its societal aspects. Depending on the case, however, he may need to play up or excuse violence. In *Pro Milone*, for example, he argues that there are instances where violence is justified.⁶¹ The vocabulary he uses, the way he constructs his sentences, his style of oratory, even the rhetorical devices and the courtroom tactics in which he engages may reveal a general social attitude to violence. To Cicero *vis* and *ius* were diametrically opposed: ‘nec iuri quidquam tam inimicum quam vis’⁶² and ‘sed etiam vis ea quae iuri maxime est adversaria iudicio confirmata esse videatur.’⁶³ *Ius* represents order, security and stability, while *vis* seeks to break it down. This contrast forms the backdrop for many of Cicero’s speeches for those of his clients who had been charged *de vi*.

⁶⁰ Garver, 819.

⁶¹ See footnote 43.

⁶² *Caec.* 33

⁶³ *Caec.* 5

Occasionally in these instances Cicero confronts the subject head-on, part of the strategy of defence being to define the charge and to contest its applicability in the specific instance. Often Cicero had great difficulty in doing this because of the broadness and scope of the legal definition. Nevertheless Cicero's attitude to violence was clear. Being a fervent adherent of constitutional government and the rule of law, he considered that *vis* was the antithesis of constitutional government, and of proper and peaceful political functioning. The *De Legibus* was started in about 52 BC⁶⁴ as a sequel to the *De Re Publica*. In it he gives the reader the full benefit of his legal, political and philosophical experience. The attitudes he expresses in his philosophical work are personal and the result of his reflections on years of political and social strife: 'deinceps sunt cum populo actiones, in quibus primum et maximum: vis abesto. Nihil est enim exitiosius civitatibus, nihil tam contrarium iuri ac legibus, nihil minus civile et inhumanius, quam in composita et constituta re publica quicquam agi per vim.'⁶⁵ It is doubtful whether this respect for due process, the rule of law, and constitutional government was shared by all classes, given the role of violence in Republican politics. 'During the Republic violence was used to force measures through an assembly, to influence the control of an election, and to intimidate or even kill political opponents. Although a number of constitutional means were designed to check it and nullify its effects, these were not proof against persistent violence on a large scale.'⁶⁶

Vis is anathema to civilization itself: 'atque inter hanc vitam perpolitam humanitate et illam immanem nihil tam interest quam ius atque vis. Horum utro uti nolumus, altero est utendum. Vim volumus extinguere; ius valeat necesse est, id est iudicia, quibus omne ius continetur. Iudicia displicent aut nulla sunt; vis dominetur necesse est.'⁶⁷ Here, in a speech which contains some of the orator's finest passages, the attitude to violence is crystal clear. *Ius* and *vis* are again diametrically opposed. In his defence of Sestius who was indicted for violence for the riots of 57 BC, Cicero argues that civilization is based fundamentally on the replacement of violence, which is the "law of the jungle", by the

⁶⁴ See Rawson (1991), 125-129.

⁶⁵ *Leg.* 3.42.

⁶⁶ Lintott (1968), 204.

⁶⁷ *Sest.* 92.

law. It is part of a call to mitigate the violence of political enmities. *Ius* facilitates the peaceful resolution of disputes. In a discussion on war Cicero postulates two ways of achieving this; the first 'per disceptationem', the second, 'per vim'. The former is a virtue of man while the latter is a characteristic of beasts. It is for this reason that, 'in re publica', there are rules even in war which must be strictly observed.⁶⁸

Violence is itself unnatural, so unnatural that nature instructs wild beasts to repel it in any way possible even through violence. Therefore what is unnatural for wild beasts is even more so for human beings. In the *Pro Milone* Cicero expresses this particularly well in defence of yet another client charged *de vi*: 'sin hoc et ratio doctis et necessitas barbaris et mos gentibus et feris etiam beluis natura ipsa praescripsit, ut omnem semper vim, quacumque ope possent, a corpore, a capite, a vita sua propulsarent, non potestis hoc facinus improbum iudicare, quin simul iudicetis omnibus, qui in latrones inciderint, aut illorum telis aut vestris sententiis esse pereundum.'⁶⁹ It is a speech which many ancient critics considered his masterpiece. For Grant it 'has a another and sadder distinction, for it casts a lurid light upon the savage chaos and vendetta which signalised these last moribund years of the Republic, and helped to make it inevitable that this once mighty institution should come to an end and be replaced by an autocracy.'⁷⁰ In this passage Cicero argues that there are occasions when violence is justified, most particularly self-defence. There is thus no place for *vis* in the natural ordered world, and the only time it may be justified is when it is used as an instrument only under certain conditions to combat a greater form of *vis* which threatens to break down law and order.⁷¹

Although Cicero realised that *vis* was *contra rem publicam*, that is not only specifically against the state but also against the rule of law and the public good, he understood the subject's subtleties and contradictions: 'quia nulla vis umquam est in libera civitate suscepta inter cives non contra rem publicam - non enim est ulla defensio contra vim

68 *Off.* 1.34.

69 *Mil.* 30.

70 Grant, 216.

71 Wood, 186.

umquam optanda, sed non nunquam est necessaria.⁷² His view is that the security of the state is the sovereign political and social value to which all other actions and ideals must yield.⁷³ When state security was jeopardised, as in the case of the Catilinarian conspiracy, those with executive power should, if necessary, engage in extra-legal measures to extinguish the danger.⁷⁴

However, it is a fundamental contradiction that the final sanction or strategy against violence must necessarily be violence itself. This contradiction was expressed in Roman law and philosophy by the maxim *vim vi repellere licet* which was a fundamental principle of Roman law.

Although the *vim vi repellere licet* principle was accepted between individuals, violence on a wider scale was regarded with a lot more suspicion by governments. Progressively so in the Late Republic and Early Principate. Thus suppression of violence on a wider scale was the province of the state alone. When the legitimate arenas for political and social expression such as the courts, the law, and even the assemblies, cannot satisfy a society's political and social needs, the state must use methods at its disposal which are beyond the limits of the authority which society is willing to tolerate normally. These methods must ultimately be violent. This can become a problem especially in the context of a politically insecure upper class and an economically unstable lower class. 'Qui cum videret sceleratum civem aut domesticum potius hostem, si legibus uti liceret, iudicio esse frangendum, sin ipsa iudicia vis impediret ac tolleret, audaciam virtute, furorem fortitudine, temeritatem consilio, manum copiis, vim vi esse superandam, primo de vi postulavit; postea quam ab eodem iudicia sublata esse vidit, ne ille omnia vi posset efficere curavit.'⁷⁵ The more insecure an upper class becomes, the more justified they feel in using violence. The upper class will exploit arguments of state security to overcome the contradictions inherent in state violence. This kind of violence, which attempts to secure the socio-political position

⁷² *Mil.* 13-14.

⁷³ *Leg.* 3.8: 'salus populi suprema lex esto.' *Rab. Perd.* 3-4; *Phil.* 11.28; *Fam.* 10.16.2: 'quocumque te ratio reipublicae ducet, sequare.' *Cat.* 1.2-4.

⁷⁴ Wood, 188.

⁷⁵ *Post Red. Sen.* 19.

the socio-political position of the upper class, is validated on the grounds of "patriotism" and state security.

The ideal conditions in which a state functions properly are those in which law and order prevail. A government therefore seeks to acquire the acquiescence of those over whom it is to govern. It does this either through the voluntary participation or inducement of the ruled where the state's legitimacy is either recognized or unquestioned, or through the application of force, real or potential, where legitimacy is challenged or in doubt. The submission of the governed must be obtained, and the relationship between ruler and ruled is nothing other than a power-relationship. However, the state will rely more on sanctions than on inducements as a basis for a continuous power relationship because sanctions 'do not have to be continually used, or even explicitly threatened to be effective in modifying behaviour. It is sufficient that people know "their place"'.⁷⁶ No-one understood this dimension of government better than Cicero who expresses this in the *De Re Publica*, a work which is sometimes thought to have had real influence on the theory and practice of the Early Principate:⁷⁷ 'quae si consuetudo ac licentia manare coeperit latius imperiumque nostrum ad vim a iure traduxerit, ut, qui adhuc voluntate nobis oboediunt, terrore teneantur, etsi nobis, qui id aetatis sumus, evigilatum fere est, tamen de posteris nostris et de illa immortalitate rei publicae sollicitor, quae poterat esse perpetua, si patriis viveretur institutis et moribus.'⁷⁸ Again the contrast between *vis* and *ius* is stressed. Here Cicero appears to anticipate the constitutional dilemma which Augustus and other emperors would have to face in the next hundred years as well as the dangers of rule by force and fear.

However, force is only one way in which submission to authority is achieved. The state would prefer to attain this through non violent means. In *De Officiis*, Cicero's last work, written in 44 BC, the philosopher attempts to reconcile expediency and virtue, a struggle which reflected the crises and difficulties of the time, when submission to authority had to be realised in any way possible: 'atque etiam subiciunt se homines imperio alterius et

⁷⁶ Beetham, 45.

⁷⁷ See Harvey, 135.

⁷⁸ *Rep.* 3.41.

potestati de causis pluribus. Ducuntur enim aut benevolentia aut beneficiorum magnitudine aut dignitatis praestantia aut spe sibi id utile futurum aut metu ne vi parere cogantur aut spe largitionis promissisque capti aut postremo ut saepe in nostra re publica videmus, mercede conducti.⁷⁹ Important things are foreshadowed in this passage. Firstly, Cicero produces two valid reasons for the voluntary submission to authority: *benevolentia* - goodwill - and *beneficiorum magnitudine* - gratitude for favours conferred. Cicero does not suggest that one should obey authority because it is the correct thing to do. It would be too much to expect the practical realization of such a Stoic sentiment. Acquiescence on such a basis would imply an unquestioned faith in the authority in dispute.

When clients were on trial for violence, Cicero often had difficulty clarifying the charge. Consequently, in the effort to formulate and define the charge, he gives us wider moral perspectives on the concept. For a broader Roman perspective on force and violence and its place in society, it is helpful, to return to the *Pro Caecina* which is a case involving subtle legal points connected with land which had been left to Cicero's client. Caecina had agreed to meet the rival claimant, Aebutius, on the land in dispute and submit to a formal "ejection" from it. On arrival, Caecina was prevented from entering and driven away by threats of Aebutius and his armed followers. Piso, who represented Aebutius, argued that there was no *vis* involved; no one had been hurt. Cicero's response was that *vis*, in the legal sense, means any extra-legal means of redress. Here, in a case which has no political aspect, Cicero seeks to define and clarify what is meant by *vis*: 'an in coacta multitudine, in armis, in telis, in praesenti metu mortis perspicuoque periculo caedis dubium vobis fuit inesse vis aliquis videtur necne? Quibus igitur in rebus vis intellegi potest, si in his non intelligitur.'⁸⁰ This passage is particularly illuminating because it introduces us to the Roman language of violence. The meaning of a word, especially an abstract one such as violence, as well as the social attitudes to that word, can be ascertained to a large extent, by the company it keeps. Thus we are given a verbal context in which *vis* operates. References are made to arms, weapons, danger, fear of death, murder. These are only some of the words which will indicate meanings of, and attitudes to, *vis*.

⁷⁹ Off. 2.22.
⁸⁰ 31.

A particular difficulty is that of implied damage or threat. The passage also sheds light on this other requirement in our touchstone definition of violence. Bearing in mind the broadness of the definition in the law, we look yet again at *Pro Caecina*: 'etenim recuperatores, non ea sola vis est quae ad corpus nostrum vitamque pervenit, sed etiam multo maior ea quae periculo mortis iniecto formidine animum perterritum loco saepe et certo de statu demovet';⁸¹ 'quae vis in bello appellatur, ea in otio non appellabitur?et vulnus corporis magis istam vim quam terror animi declarabit?';⁸² Actual physical damage need not be evident. We are able also to appreciate how seriously Romans of Cicero's time considered the connection between fear and violence - *vis et metus*. Damage can be psychological as well as physical, and for Cicero what Wood calls "psychic violence" was a more potent means of control than physical violence.⁸³ e.g. 'quod igitur fugiebat? propter metum. Quid metuebat? Vim videlicet.'⁸⁴ *Metus* and *vis* are frequently found together, eg. in the phrase *per vim et metum*.⁸⁵ Furthermore these two words often occur accompanied by a verb of compulsion, e.g. *coactus vi et metu*, thereby expanding the meaning of *vis* and giving it an aspect of something which works against will.⁸⁶ Fear in the context of *vis* is not only found as a noun but with verbs which denote fear such as *metuo*, *pertimesco*, *timeo* and *terreo*.⁸⁷

From the perspective of the victim, *vis* also works against the will. The Romans appreciated that there was a natural order to things and that consequently anything which interfered with this process was necessarily a *vitium* which imposed itself through force - *per vim*. What the *Realencyclopädie* expresses as *Willensmangel*⁸⁸ is articulated through verbs of compulsion. Of these *cogere* is the most common.⁸⁹ *Vis* is a means through which

81 42.

82 43.

83 Wood, 187.

84 44.

85 E.g. *Verr.* 2.3.152, 2.4.147, 2.2.150.

86 *Coactus vi et metu*: e.g. *Verr.* 2.3.143, 2.4.140; *Flacc.* 49: 'teneremini vi, ferro, metu, minis'; *Red. Sen.* 3: 'vi et metu extortum'; *Pis.* 86.

87 *Metuo*: e.g. *Leg. Agr.* 2.68; *Dom.* 44. *Pertimesco*: *Verr.* 2.2.179; *Leg. Man.* 69; *Clu.* 128; *Cat.* 1.17; *Red. Sen.* 37. *Timeo*: *Phil.* 2.115; 5.81.

88 See footnote 39.

89 See e.g. *Verr.* 2.3.71, 118.

objectives are reached usually in a manner which is at best irregular, at worst, illegal. Consequently the verb of compulsion is most often accompanied by an ablative⁹⁰ or preposition.⁹¹ There are other verbs of compulsion: *coercere*,⁹² *compello*,⁹³ *depello*⁹⁴ and *expello*⁹⁵ are all used in the same sense. The use of *opprimo* broadens *vis* giving it a societal and political sense of something that suppresses will.⁹⁶

Over and above the idea of fear and compulsion, there are other concepts which indicate violence. The choice of verbs, for example, can add flavour and force to what a sentence is attempting to say. Cicero imports the language of the battlefield to a non-military setting in order to convey the violent context of his topic. Thus verbs such as *adgredi*, *obsidere*, *certare*, *inruere*, *armare* and *oppugnare* appear with *vis* where the context of the sentence is not necessarily a military one.⁹⁷ Similarly there are verbs which indicate interference with the natural order of things such as *disturbare*, *impedire*, *detrahere* and *debilitari*.⁹⁸ The agencies of power have the means of physical force. 'The means of physical force give those who possess them the ability to obstruct, constrain, hurt, harm or destroy those who lack them, and to compel them to action or inaction through the threat of such inflictions.'⁹⁹ In this way the verb in the sentence which contains *vis* can indicate the nature of the violence as well as its effect. Thus verbs such as *eripio*¹⁰⁰, *erumpo*¹⁰¹, *frango*¹⁰² and *perfringo*¹⁰³ not only impart a negative bias but also express the destructive nature of *vis* and the means by which the destruction is achieved.

⁹⁰ With the ablative and the participle: See e.g. *Lig.* 7, *Verr.* 2.4.140; *Flacc.* 49; *Clu.* 19; *Quinct.* 57.

⁹¹ With preposition: *Verr.* 2.2.150.

⁹² *Cat.* 4.22; *Cluent.* 147.

⁹³ *Mil.* 73.

⁹⁴ *Sest.* 76; 39; *Har. Resp.* 58.

⁹⁵ *Sest.* 53, 63.

⁹⁶ See e.g. *Sest.* 86; *Mil.* 38; *Phil.* 2. 56, 9.15.

⁹⁷ *Obsidere*, *adgredi*: See e.g. *Sall. Cat.* 43.2; *certare*: *Cic. Sest.* 78; *decertare*: *Cic. Dom.* 63; *oppugnare*: *Cic. Sest.* 133; *Sall. Cat.* 60.3, *Jug.* 60.1; *inruere*: *Cic. Tull.* 34.

⁹⁸ *Disturbare*: *Sull.* 71; *Sest.* 135. *Detrahere*: *Red. Quir.* 19. *Impedire*: *Red. Sen.* 19. *Debilitari*: *Marc.* 8.

⁹⁹ Beetham, 48.

¹⁰⁰ See *Cic. Sext. Rosc.* 15; *Verr.* 2.2.77; *Sest.* 91; *Scaur.* 19.

¹⁰¹ *Cic. Sull.* 76.

¹⁰² *Cic. Marc.* 8; *Sest.* 58, 88; *Dom.* 55.

¹⁰³ *Cic. Leg. Agr.* 2.99.

Another aspect to the meaning of *vis* can be ascertained by examining words which occur in agreement with it. Adjectives and participles are particularly useful in this respect. Also nouns as complements can be of assistance. To deal firstly with adjectives and participles. *Vis* is dangerous, deadly (*fatalis*).¹⁰⁴ It is something mad, irrational (*furiosa*),¹⁰⁵ certainly wicked (*nefaria*)¹⁰⁶ and even destructive or disastrous (*calamitosa*).¹⁰⁷ It is significant that *vis* appears rarely in the works of Cicero with an adjective. Even participles are rare. *Vis armata* is a notable exception which is very common.¹⁰⁸ The number of adverbs is limited but verbs are more frequent. A possible explanation for this phenomenon is that adjectives can diminish the force of the word as well as amplify it. With a word such as *vis* Cicero appreciates the risk of overkill. If it is accompanied by adjectives or coupled with a noun there is the danger of "going over the top" or introducing a whole new set of inappropriate associations.

When *vis* does appear in conjunction with another noun to form one unitary concept, its meaning is both expanded and amplified e.g. *vis et metus* or *vis et iniuria*.¹⁰⁹ An example is provided in Cicero's *Post Reditum ad Quirites*: 'mihi quod potuit vis et iniuria et sceleratorum hominum furor detrahare.'¹¹⁰ A tricolon crescendo effect here lends extra force, while the words *furor* and *iniuria* betray attitudes to violence of madness, injury and damage. *Vis* and *furor* appear more than once.¹¹¹ *Vis* also appears with other nouns such as *crudelitas*,¹¹² *turba*,¹¹³ *severitas*,¹¹⁴ *acerbitas*,¹¹⁵ *tumultus*,¹¹⁶ *audacia*,¹¹⁷ *necessitas*,¹¹⁸ and *imperium*.¹¹⁹

104 Cic. *Phil.* 3.29.

105 Cic. *Dom.* 44.

106 Cic. *Har. Res.* 15; *Sest.* 76.

107 Cic. *Phil.* 14.9.

108 See footnote 129 -130.

109 E.g. Cic. *Prov. Cons.* 41; *Verr.* 2.3.91; 1.96; *Planc.* 77.

110 19. See also *Vat.* 33; *Dom.* 68.

111 Cic. *Vat.* 33; *Dom.* 68.

112 Cic. *Red. Sen.* 29; *Verr.* 1.1.77.

113 Cic. *Sext. Rosc.* 91; *Cluent.* 103.

114 Cic. *Mur.* 6; *Caec.* 6.

115 Cic. *Verr.* 1.1.68.

116 Cic. *Verr.* 1.1.63.

117 Cic. *Verr.* 2.5.34; *Vat.* 17.

118 Cic. *Quinct.* 51.

119 Cic. *Verr.* 2.3.71.

In a wider perspective, the way Cicero constructs his sentences adds dimension and depth to his subject. As a master of rhetoric he employs every stylistic device to achieve this. Meaning and attitude will be emphasized in a *tour de force* of alliteration, assonance, anaphora, asyndeton and even tricolon crescendo, e.g. 'nulla contumelia, nulla vis, nullum periculum possit depellere';¹²⁰ 'nullam vim, nullum impetum metuo';¹²¹ 'ad vim, facinus caedemque';¹²² 'vi malo plagis';¹²³ 'vi, ferro, periculis';¹²⁴ 'vi, ferro, metu, minis obsessi';¹²⁵ and 'ut sine occulto consilio, sine nocte, sine vi, sine damno alterius, sine armis, sine maleficio fieri potuerit.'¹²⁶ These are not merely stylistic devices. They contribute significantly to the meaning and attitude of the subject, and they convey to us, in no uncertain terms, the passion Cicero had thought appropriate to the subject. In some cases there is a conceptual progression. What begins with *vis*, for, example will end, via *ferrum*, *arma* or *periculum*, inexorably, in *caedes*.

Vis, in the ablative also occurs in a two part formula which shows not only the manner in which a certain end is attained, but also the specific means through which the violence is manifested. *Vi et armis*,¹²⁷ indicates that the violence was not only physical, but was also achieved through the use of weapons. The words together make up one concept and illustrate one specific type of violence. With *vi et minis*¹²⁸ or *vi et metu*, on the other hand, the physical element of the type of violence in question is removed or distanced and takes on a psychological dimension in which not only physical threats but also intimidation are the major features.

The relationship between arms and violence is critical for a proper understanding of the subject. This is expressed particularly through the participle *armatus*.¹²⁹ A common phrase

120 *Ligar.* 26.

121 *Dom.* 55.

122 *Leg. Agr.* 2.77, 3.16.

123 *Verr.* 2.3.56.

124 *Har. Resp.* 58.

125 *Red. Sen.* 3.

126 *Tull.* 32.

127 *Cic. Caec.* 1, 37, 39, 64; *Mil.* 73; *Sull.* 71; *Sest.* 86; *Phil.* 2.56; *Red. Sen.* 33.

128 *Cic. Cat.* 2.14; *Phil.* 3.23; *Verr.* 2.3.67; *Leg.* 2.14.

129 *Cic. Dom.* 94

is *vi armatis hominibus*.¹³⁰ The means by which violence is physically inflicted is very important. Yet it is never clear what precisely is used. Weapon terminology in the context of conceptual violence is rarely specific; *vis* is accompanied by general terms for weapons such as *lapides*, *saxa*, *tela* and *ferrum*. The specific vocabulary for weapons, such as *gladius*, *lancea*, *pilum* and *hasta* are all part of the Roman soldier's equipment and therefore enjoy a certain measure of respectability which Cicero would not want to associate with *vis*. This may be so because the perpetrators of violence did not have access to military weapons. Indeed, it was an offence for the *plebs* to carry weapons of any kind. But the use of vague and generic terms serves also to distance the Roman army, through which legitimacy was enforced, law and order guaranteed and Roman imperial glory advertised, from those who wickedly sought to overthrow the state by means of violence. A distinction must be drawn between the vocabulary of the battlefield¹³¹ which brings home the action, cruelty and brutality of military conflict in a general sense, and the military vocabulary of a Roman institution which has associations of the heroism of the Roman character and the illustriousness of Roman military history. Consequently, Cicero avoids using military vocabulary with *vis* because he wants to deny *vis* the legitimacy of such association and to exclude criticism of the state and its legitimate organs of force.

Moreover, since the law is vague, it can be good courtroom strategy to be correspondingly vague. Indeed Cicero did not need to be specific. The *lex Julia de vi* uses *telum* which it provides with an appropriately wide definition: 'telorum autem appellatione omnia ex quibus singuli homines nocere possent accipiuntur.'¹³² Two passages illustrate the connection between *vis* and weapons well. In the first Cicero traces the destructive path of violence: 'quid opus fuit vi, quid armatis hominibus, quid caede, quid sanguine?'¹³³ Because the men are armed there is carnage and bloodshed. In the second Cicero contrasts and balances the instruments of violence with the mechanisms of civilization, and comes to a definite conclusion as to the effectiveness of violence and thus its desirability: 'quos lapidibus, quos ferro, quos facibus, quos vi, manu, copiis delere non potuerunt, hos vestra

¹³⁰ E.g. *Tull.* 7, 11, 12, 27, 31, 54; *Caec.* 75, 80, 89, 91.

¹³¹ See footnote 97.

¹³² *Dig.* 48.6.11.1.

¹³³ *Tull.* 54.

auctoritate, vestra religione, vestris sententiis se oppressos arbitrantur'.¹³⁴ The notion of weapons is thus central to an understanding of violence and we can therefore understand Cicero's impassioned plea, 'vis absit, ferrum ac lapides removeantur.'¹³⁵

Moving on from Cicero to a wider literary approach, the employment of weapons to inflict *vis*, can consequently be considered a *vitium* which jeopardises Roman *virtutes* and the ideal Roman way of life as expressed in poetry. Thus we are not limiting ourselves to one man's perspective. These attitudes to violence were shared by others, poets and politicians alike. The poets of the Late Republic look back fondly to the Golden Age 'quam bene Saturno vivebant rege.'¹³⁶ In those days 'non acies, non ira fuit, non bella, nec ensem immiti saevus duxerat arte faber.'¹³⁷ The reason for this nostalgia is the social and political crisis of the Late Republic. Tibullus bewails the inventor of weapons who is 'ferus et vere ferreus':

Quis fuit, horrendos primus qui protulit enses?
Quam ferus et vere ferreus ille fuit!¹³⁸

Ovid, in the *Metamorphoses*, contemplates the four ages of man. The first¹³⁹ was a time when man knew neither law nor fear, 'poena metusque aberant', an age of golden bliss not shadowed by the menaces which military equipment brought.

non galeae, non ensis erant: sine militis usu
mollia securae peragebant otia gentes.'¹⁴⁰

The second,¹⁴¹ the "silver age" witnessed the emergence of homes, the planting of crops and the subjugation of animals to the will of mankind. The third age¹⁴² was the "bronze age" - 'saevior ingeniis et ad horrida promptior arma, non scelerata tamen.' But the fourth age was one of harsh iron,¹⁴³ when all manner of crime broke out and the virtues of modesty, truth and loyalty surrendered to wicked vices of deceit, violence and criminal

134 Sest. 2.
135 Flacc. 97.
136 Tib. 1.3.35.
137 Tib. 1.3.47-48.
138 Tib. 1.10.1-2.
139 Met. 1.89-112.
140 Met. 1.99-100.
141 Met. 1.113-124.
142 Met. 1.125-127.
143 Met. 1.127: 'De duro ultima ferro.'

greed: 'insidiae et vis et amor sceleratus habendi.'¹⁴⁴ Iron (*ferrum*) was responsible for the demise of man.

Iamque nocens ferrum ferroque nocentius aurum
prodierat: prodit bellum, quod pugnat utroque,
sanguineaue manu crepitantia concutit arma.'¹⁴⁵

Earlier in Ennius the contrast between civilization and the viciousness and barbarity of *vis* is emphasized:

<Proelia promulgantur,>
Pellitur e medio sapientia, vi geritur res;
Spernitur orator bonus, horridus miles amator;
Haud doctis dictis certantes, nec maledictis
Miscent inter sese inimicitias agitantes;
Non ex iure manu conseritur, sed magis ferro -
Rem repetunt regnumque petunt vadunt'.¹⁴⁶

Vis is one of the principal factors responsible for substantial social deterioration. The instruments of violence have taken over and there can no longer be a situation where:

pace bidens vomerque nitent at tristia duri
militis in tenebris occupat arma situs.¹⁴⁷

Contrast is another device through which meanings of violence and attitudes to it can be divined. The contrast between *vis* and *iure* has already been mentioned.¹⁴⁸ In the *Philippics*, for example, there are several instances of the use of the phrase 'per vim et contra auspicia'.¹⁴⁹ When C. Manilius, tribune of 66 BC promulgated a bill on the matter of voting rights for the *ordo libertinus*, it was eventually passed, but only through some tumult and violence; the bill was annulled by the senate on the ground that had obtained its passage *per vim* or perhaps *contra auspicia*.¹⁵⁰ Violence stands against all Rome's customary practices and the legislative processes. Another example of Cicero's use of contrast and balance and other rhetorical devices to drive home a particular attitude to violence, can be found in *Pro Sestio*: 'victa igitur est causa rei publicae et victa non auspiciis, non intercessione, non suffragiis sed vi, manu, ferro.'¹⁵¹ The sentence falls into two parts, the first positive, the second negative. 'Victa' is emphatically positioned

¹⁴⁴ *Met.* 1.129.

¹⁴⁵ *Met.* 1.141-143.

¹⁴⁶ Ennius 8.1. Cicero considered these lines important enough to recall them in *Mur.* 30, as well as *Att.* 15.7, and *fam.* 7.13.2. See Skutsch, 92, 430-437.

¹⁴⁷ *Tib.* 1.10.49-50.

¹⁴⁸ See page 14.

¹⁴⁹ *Phil.* 5.10, 6.3, 12.12, 13.5.

¹⁵⁰ *Cic. Corn.* 1, fr. 8-10, 16, 14; *Mur.* 47; *Ascon.* 45, 64-65, 76C; *Dio* 36.42 1-3. See also Broughton, 153.

¹⁵¹ *Sest.* 78

allowing the reader to anticipate the tragedy that is to follow. It is an emphasis that is intensified at the beginning of the next phrase, thus framing the subject of the sentence, one which was close to Cicero's heart. This is followed by the positive aspect of the sentence made prominent through the use of anaphora. These are the mechanisms of peace, the things for which the Republic and Cicero stand. This is undercut through enormous economy of language, achieved by asyndeton, when Cicero expresses the agents of the Republic's destruction in three short words. Cicero's distaste is such that it must be stated as briefly as possible.

The Republican attitude to violence was clear. This attitude was expressed through the use of the word *vis*. The Romans realized the dangers violence held for society and understood the impact it would make should it be allowed to go uncontrolled or unmonitored. Thus they sought in the last years of the Republic even to legislate against it. This was part of a largely unsuccessful programme to contain violence. In the Principate new efforts would have to be made. They would be efforts which can be argued lay mostly beyond the scope of legitimacy or constitution, and therefore more often than not involved the very violence they sought to control.

CHAPTER TWO

VIOLENCE AND THE EVOLUTION OF THE CRIMINAL LAW IN THE EARLY PRINCIPATE.

INTRODUCTION

In chapter one I showed that law was a mechanism for the regulation of the affairs of society in general and for the control of violence in particular as it threatened the structure of society and that law, as it is written, reflects the needs and attitudes of society, and more especially the needs and attitudes of the governing class. Furthermore, law is not merely a formal system of rules, but is the prime method of ordering society, the purpose of which is to attain social harmony and thereby a just society.¹ Even if Augustus could not express this in these terms when he embarked on his programme of legislation and social reform, he must have appreciated that before social harmony can be acquired, order must be realised. It is particularly important for a proper understanding of Roman history to have some knowledge of Roman law and the legal system. The abundance of juristic evidence left to us sheds light not only on the Romans' social life and institutions, but also on the workings of their political and legal mind. In the context of violence therefore, a brief discussion of the Roman philosophy of law is relevant, because it will shed significant light on the manner in which legislation against violence was approached, as well as the quality of the legislation itself.

On law as a phenomenon that strives to achieve social harmony, there are two perspectives. For those who believe that mankind is intrinsically evil, social progress cannot be realised without the restrictions of penal laws. In this view, law is the indispensable restraint upon the forces of evil, and anarchy and the absence of law is the supreme horror to be warded off. On the other hand, those who see the nature of man as inherently good seek to find the origins of the ills of man's present condition outside man himself. For them man's true nature has become distorted and thus requires for its control the rigours of a punitive system of law. Law is a natural necessity after the Fall to mitigate the evil effects of sin.

¹ The magnitude of the jurisprudential debate as to what law is and how it functions lies beyond the ambit of this study. Nevertheless, for an overview of the philosophies which have attempted the resolution of this question, consult Lloyd and Harris.

The former, having a more optimistic assessment of human failings, are inclined to look back to an earlier Golden Age² of primeval innocence when men lived simple, happy and well-ordered lives without the need for any external system of legal rules or coercion to restrain their impulses, which were wholly unselfish and directed to the common good of mankind.³ This was a common theme among the poets, historians and philosophers of the ancient world. Ovid⁴ recalls the primitive paradise:

quae vindice nullo,
sponte sua, sine lege fidem rectumque colebat.
poena metusque aberant, nec verba minantia fixo
aere legebantur, nec supplex turba timebat
iudicis ora sui, sed erant sine iudice tuti.

For Seneca⁵ the Golden Age was a "communist" Utopia where men 'in commune rerum natura fruebantur.' On the other hand in his account of Early Man,⁶ which is neither cynical nor sentimental, Lucretius describes a life that was tough and simple, but not unattractive. For him the harshness and violence of primitive life led eventually to the making of laws and the regulation of society through institutions:⁷

Inde magistratum partim docuere creare
iuraque constituere, ut vellent legibus uti.
Nam genus humanum, defessum vi colere aevum,
ex inimictiis languebat; quo magis ipsum
sponte sua cecidit sub leges artaque iura.

In an excursus in the *Annales*, Tacitus deals with the origins of law, in the context of the *lex Papia Poppaea*, a cornerstone of Augustus' moral legislation.⁸ According to Tacitus, man was originally good by nature, 'nihil contra morem cuperent, nihil per metum vetabantur,'⁹ and has since degenerated to be egotistic, greedy and self serving; the forces responsible for this disintegration were ambition and violence and its consequences were tyranny and despotism: 'at postquam exui aequalitas et pro modestia ac pudore *ambitio* et

² See chapter 1, p25.

³ Lloyd, 14.

⁴ *Met.* 1.89-93.

⁵ *Ep.* 90.38.

⁶ 5.925-961.

⁷ 5.1143-1147.

⁸ *Ann.* 3.25.2. 'de principiis iuris et quibus modis ad hanc multitudinem infinitam ac varietatem legum perventum sit, altius disseram.' The *lex Papia Poppaea* was passed in AD 9, supplementing a Julian law of 18 BC regulating matrimonial matters. Its purpose was to encourage marriage and the production of children by offering a variety of incentives, while at the same time imposing certain disabilities on those who failed to respond.

⁹ *Ann.* 3.26.1.

vis incidebat, provenere dominationes multosque apud populos aeternum mansere.’ It is a pessimistic view consistent with Tacitus’ broader historical perspective. Nevertheless, he does appreciate Augustus’ pivotal role in the restoration of order. Where, in the previous twenty years there had been neither *mos* nor *ius*, only *discordia*, now ‘sexto demum consulatu Caesar Augustus, potentiae securus, quae triumviratu iusserat abolevit deditque iura, quis pace et principe uteremur.’¹⁰

Although this is strictly Tacitus’ perspective, this passage nevertheless points to a few specific aspects which will form the substance of this chapter. Firstly, in order for the *pax* of the principate to materialize, Augustus had to become ‘securus potentiae’. Having secured power and peace, Augustus could then formulate the legislation for the *novus status*, so that he could retain his position. Secondly, the alliterative phrase ‘pace et principe’ underlines the fact that they are two essential parts of a whole dependent on each other. The *princeps* owed his position to the prevalence of *pax*; *pax*, however, could not be attained without the agency of the *princeps*. Thirdly, the *princeps* himself gave the laws which ensured *pax*. There was a major shift from the Republic, where ‘salus populi suprema lex esto’,¹¹ to the Empire, in which ‘quod principi placuit, legis habet vigorem.’¹² This chapter will examine the measures which Augustus and Tiberius promulgated especially relating to the courts and legal system in which their laws were supposed to be applied. If Tacitus is to be believed, Augustus was responsible for major innovations in the legal sphere. These innovations were to affect significantly the nature of violence in the Early Principate. I will argue that their impact was to be felt even in the Late Empire in that they created the scope and legitimacy for government (by this I mean authority, and thus institutional violence) to visit violence on its citizens in a fashion never before experienced.

Innovations in the criminal law system will come under particular scrutiny, for here Augustus made his most significant contribution. By contrast, in the processes of civil

¹⁰ *Ann.* 3.28.1-2. Octavian’s sixth consulship - 28 BC.

¹¹ *Cic. Leg.* 3.8.

¹² *Dig.* 1.4.1. (Ulpian).

Augustus made his most significant contribution. By contrast, in the processes of civil jurisdiction Augustus made a less marked impression;¹³ a further contrast will be drawn with Augustus' social legislation, which was another means of interference and acquisition of state control. While social legislation is a method of moulding society into a particular structure, the criminal law and its provisions of sanction are the ultimate means through which obedience to state authority is obtained. Security legislation, for example, is a contrivance to satisfy, and render legitimate, political goals through the criminal system. Consequently, the relationship between state and citizen becomes all important and is seen most obviously in the operation of criminal law.¹⁴ For Garnsey, this has a specific political aspect: 'the intrusion by the state into the sphere of private jurisdiction.'¹⁵ I will argue that the extent of the interest shown by government in the private lives of its citizens reflects the political and constitutional uncertainty felt by that government. This is particularly so in the case of Rome in the transition from Republic to Principate. The criminal system as a whole, and the innovations to which it was subject, is a gauge by which Augustus' interest in the lives of his citizens can be measured. The criminal system, according to the political philosopher Durkheim, will reflect the quality of the relationship between ruler and ruled. In the case of an absolute monarch and his subjects this relationship is not reciprocal but unilateral.¹⁶ This position is perhaps too strong for a political context in which Augustus was trying to disguise the monarchy with the myth of the restoration of the Republic. In reality however, the power of the Roman emperors was absolute and autocratic. But it was a power expressed in behaviour which fluctuated between *civilitas*, the conduct of a citizen among citizens (which allowed the relationship between the *princeps* and his subjects to be bilateral), and *superbia*, the disdainful bearing of a king and superhuman being.¹⁷

There are two aspects to a criminal law system. In this chapter I will address the first, the "pre-conviction" aspect, which comprises the law itself, the procedure which governs it and the courts which enforce it. The second, that of the punishment handed down after

¹³ Cf. Jones (1968), 86; also Jones (1955), 464-88.

¹⁴ Crook, 268.

¹⁵ See Garnsey (1966), 154.

¹⁶ Garnsey (1966), 142-143.

¹⁷ The ambivalence of the relationship between the monarch and his subjects is considered by Wallace-Hadrill (1982), 32-48.

conviction, will be reserved for a later chapter.¹⁸ Both aspects, however, were subject to change and evolution in the Principate; both are significant in determining the nature of violence in the period; the first through the disintegration of proper court procedure and the consequent arbitrary judgements which the courts handed down - justice became a scarcer commodity - and the second through the deterioration, and the greater licence to be more severe, in the infliction of punishments. The criminal sphere shows a definite trend in deterioration towards violence.¹⁹ Crook comments that 'everyone is struck by the apparent contrast and lack of savagery of the penalties for crime in the Republican age of Rome and the diversity and increasing brutality of those under the principate.'²⁰ There is a relationship between the harshness of punishment and the character of government. Durkheim asserts that 'the basic cause of the relative harshness of the Imperial penal law was the tendency towards absolutism of government under the Empire.'²¹ While Garnsey uses this as a springboard for an enquiry into the evolution of penalties over four centuries, he does not give adequate weight to the evolution of the mechanisms which made these penalties possible. I shall argue here that these two aspects cannot be viewed separately and that this evolution is responsible for the violence evident in the Early Empire and created the structures and context for the violence of the Later Empire.

In this regard the individual Roman citizen was assailed on two fronts. In the courts he saw his legal right to decent treatment as an individual suffer a steady degradation, to such an extent that it was only a little modified by touches of *humanitas*.²² Politically, the value of Roman citizenship declined correspondingly, so that by the time of Caracalla it meant very little. Institutional changes, such as those in the criminal law were partly responsible for this decline.²³ They gave judges the opportunity to exploit the social divisions within the population, thus widening the gap between status groups. This in turn caused the privileged status group to become narrower while the lower order group became broader.

¹⁸ See chapter 4.

¹⁹ Cf. Garnsey (1966), 152.

²⁰ Crook, 271.

²¹ Crook, 142-143.

²² See MacMullen (1986), 153.

²³ Garnsey (1970), 269-270.

It is essential to see that these fundamental changes took place against the background of a Rome in transition from rule by an oligarchy to what was in effect a monarchy. One of the principal considerations in effecting these changes was the need to combat social and political violence before it became proper opposition to government and to achieve the political goal of ensuring the position of the emperor as the personification of the state. The efforts of the emperor in this regard might well have resulted in greater violence, actual or potential, of the kind he was hoping to prevent because of resistance to the new political regime. But it did not. Instead, the emperor, as government, was given greater powers, greater flexibility and greater room to deal with violence without the constraints which limited Republican authorities.

A criminal system, in order to be effective, must function legitimately. The system acquires legitimacy through procedure and its role in the political process. Procedure is important because it guarantees uniformity - each case is handled in a standard way, in a specific arena, and according to specific rules. Participation in the process is important because it is by that process that the governed grant to those who govern the right to judge. In this equation, therefore, the courts play an essential role in the smooth functioning of a political society. They are the mechanisms through which the state enforces its commands. And the commands of the state must be obeyed if it is to retain its position. Obedience to these commands is secured either through fear and force, generated by the power vested in the state, or through allegiance to the state by virtue of a social contract. Such allegiance can only be demanded by a ruler who is able to establish a valid claim to control the state. Power alone is not enough. '*De facto* power in itself has not been regarded as sufficient grounds for establishing an obligation to serve and obey. The powers of the state must have been acquired legitimately, in accordance with established practice, and be used appropriately for accepted purposes.'²⁴ This is especially true of the criminal system.

Rome's entire judicial system underwent radical change from a mild and predictable system which enjoyed, if not the support, at least the tolerance of those who fell under its

²⁴ Macfarlane, 33.

jurisdiction, to an organ of state the aim of which was not so much justice as social control and the suppression of violence. During the Republic, the criminal system had operated smoothly under Republican conditions. Strachan Davidson exaggerates the position: 'so far as citizens were concerned the criminal law of the Roman Republic, in spite of abundant threats of capital punishment, became in practice the mildest ever known in the history of mankind.'²⁵ MacMullen, however, brings perspective to the subject: 'the vast majority of citizens, however, were they to be asked what era they would wish to live in, Cicero's or Marcus Aurelius', for the enjoyment of physical safety in the Empire's courts, would no doubt have preferred the former.'²⁶ There seems to be consensus on this point. 'The accepted view is that the penal system of the middle and late Republic was relatively mild. The system as we know it was milder in practice than it was in theory.'²⁷

The procedure of criminal trials in the Republic indicates this mildness. For example, in the standing jury courts of the Roman Republic verdicts were delivered by juries of up to seventy-five, and the presiding magistrate restricted himself to ensuring an orderly conduct of the trial (and in this he was usually very easy-going), whereas the trials of the Empire were characterised by the *cognitio* procedure and the increasing intervention of the judge.²⁸ In the Republic 'the fairness with which the rules of Roman criminal procedure afforded the accused scope for his defence is most impressive and might even seem to us to be exaggerated,'²⁹ and was guaranteed by rules of procedure which were consistently applied. Kunkel goes further to say that 'the jury courts of the Republic had shown signs of developing something like the rule of law and the principle of impartial criminal justice, and with their disappearance this tendency was also partly submerged.'³⁰

A reverse took place in the Early Empire to a system which became much milder in theory than in practice. This transition can be more easily discerned in the criminal law, but it was inevitable that eventually civil jurisdiction would be affected as well, as the state sought to

²⁵ Strachan Davidson, 114.

²⁶ MacMullen (1986), 153.

²⁷ Garnsey (1966), 143.

²⁸ For more detail, see chapter 3.

²⁹ Kunkel, 65.

³⁰ Kunkel, 70.

control the lives of its citizens in the interests of national security.³¹ This is not to say that the Republican system did not strive at social control too. But two factors rendered the Republican system inadequate. Firstly, the increase in law suits clogged up the courts to such an extent that the system was severely retarded. Secondly, the new political context demanded a greater emphasis on state security which the Republican system was not able to provide.

National or state security (which to Cicero was a paramount consideration) was the chief motivating factor for these changes. From the very beginning of the Principate personal safety was a matter of almost paranoid concern for the emperor. At one stage Augustus wore a steel corset and a sword beneath his tunic 'sub veste munitus', and senators were not even allowed to approach his chair except one by one and after they had been searched.³² Such was the extent of his fear. Admittedly in this case, Augustus was afraid that those excluded by him in the *lectio senatus* of 29 or 28 BC would attempt his life. Nevertheless it exposes the vulnerability of the emperor to assassination, a vulnerability to which Tiberius was equally sensitive. His first act as *princeps* was to call on the Praetorians to provide him with a bodyguard.³³ Towards the end of his reign the sources represent him as living in a state of terror, 'praetrepidus... vixit.'³⁴ He became more sensitive to attacks upon his position and his power, which resulted eventually in a frenzy of treason trials that Seneca could hyperbolically represent as leading to loss of life greater than the civil war.³⁵

The institutional changes made to the criminal courts and the criminal law were measures to achieve security of state by centralizing as much power - in this case judicial power - in the emperor's hands as possible. Similarly the delegation of judicial duties to the *praefectus urbi*, the emperor's appointee, was one of the ways in which he retained "hands on" control. There are two dangers in such centralization, however. Firstly, government loses

³¹ Cf. MacMullen (1986), 165.

³² Suet. *Aug.* 35.1-2.

³³ Suet. *Tib.* 24.1.

³⁴ Suet. *Tib.* 63.1.

³⁵ Sen. *Ben.* 3.26.1.

its democratic character with the result that participation and faith in the political process by the governed evaporates. This places a strain on the state, which consequently becomes more absolutist as it relies more on violence and unilateral measures to exercise control and secure itself. Thus the arena for political bargaining between state and subject is removed from the formal structure of assembly or *curia* to informal arenas where violence is often either the result or indeed the means of political communication between ruler and subject.

Secondly, as the state assumes for itself the organs of control, the checks and balances which may exist and operate against arbitrary government disintegrate and eventually disappear. In the end constitutional government itself disappears. The constitutional notion of separation of powers is something for which Augustus had no appreciation. This is admittedly a modern idea,³⁶ but one which guarantees a citizen protection against arbitrary and tyrannical government through the independence of a judiciary. In modern constitutional theory the concept of courts independent of the government is essential to stable, efficient and even-handed administration. This independence secures a subject's acceptance of court decisions and acquiescence to the commands of the state which the legal system and the courts enforce. A modern formulation is instructive: 'I (as a citizen) can have no obligation to obey illegal commands of the state sovereign, and under constitutional government the legality of any command can be judicially determined by independent courts. Constitutional rule is the antithesis of arbitrary rule since it defines the limits and the powers of the government. Moreover, by separating the government from the state it has been made possible to distinguish between opposition and treason.'³⁷ In the Republic, the judicial structures did enjoy some independence from government. But Augustus realised that the judicial system was no longer adequate for the political and social exigencies of the time and therefore required substantial reform. Moreover, it was an effective method of establishing social control. Suetonius tells us that although Augustus considered the restoration of the Republic, he thought better of it because to divide the

³⁶ The principle of separation of powers was first propounded the French philosopher Montesquieu (1689-1755) in his his work *De l'esprit des lois* which had considerable influence on the form of constitution that was later adopted by the USA.

³⁷ Macfarlane, 33-34.

responsibilities of government among several hands, 'plurium arbitrio', would be detrimental not only to his own life but also to national security.³⁸

At this stage two matters of crucial importance must be addressed before discussing the nature of the changes to the criminal law of the Early Principate. They are important because they reach to the very essence of the Roman criminal law and go a long way in explaining the nature of violence in Roman society at the time. First is the structure of Roman society itself, for any legal system affects the different strata of society in different ways. The second is the role of the concept of self-help in Roman criminal law. As far as the first matter is concerned, it is not the place here to discuss in any depth the structure of Late Republican or Early Imperial Roman society,³⁹ or to investigate in any detail whether class analysis of ancient society is valid.⁴⁰ It is enough to say that Roman society was characterised by deep social, economic and political inequality and that Augustus in no way attempted to reform this. Rather, the Augustan revolution was essentially conservative, a product of the chronic social and political turmoil of the late Republic.⁴¹ Nevertheless, social tensions and divisions persisted, but the 'social order was held together by the family, by other vertical and horizontal relationships, and by other ideological, legal, and the coercive power of the state.'⁴²

Augustus' social and political efforts were directed at entrenching the separation between upper and lower strata, confirming existing social divisions, and indeed accentuating them. Uncontrolled social mobility was militated against,⁴³ a policy which was expressed in

³⁸ Suet. *Aug.* 28.1.

³⁹ On the structure of Roman society, see in general G. Alföldy (1988), especially chapters 5 and 6.

⁴⁰ For a short but penetrative and illuminating discussion on class analysis in Roman society, see Garnsey and Saller 109-123, who consider it 'unhelpful' to approach the analysis of social inequality and social structure of the ancient world in terms of modern political theorists such as Weber, for whom social inequalities are to be seen as status divisions, or Marx, for whom social inequalities are to be considered as class divisions. See also chapter 6, p164ff.

⁴¹ Cf. Garnsey/Saller, 107.

⁴² Garnsey/Saller, 199. For the the vertical and horizontal divisions of the Roman social order, see G. Alföldy's diagram (at 146).

⁴³ Both Augustus and Tiberius endeavoured to restrict and regulate social mobility which was considered a threat to state security. Laws to this effect were promulgated. For example, the *lex Junia* (19 BC) bestowed only Latin rights to those who were freed. The *lex Julia theatralis* was introduced to formalize the

Augustus' legislative programme in general and was felt in the criminal legislation in particular. This was an important aspect of Augustus' rule and needs to be mentioned if the question of violence in the early Empire is to be understood. Augustus did not seek to reform such a status and hierarchy-conscious society as Rome's, as much as to fashion it through legislation in order to maximise political control for himself.

Augustus' programme of legislation was directed at halting the blurring of traditional social lines and the dislocation of social relationships which the political upheavals and civil wars of the last century had brought about. Consequently, as Reinhold says, 'in the Imperial period, under the influence of the socio-political philosophy of Augustus, the Romans developed the highest degree and diversity of formal social stratification, and at the same time the highest incidence of social mobility in antiquity.'⁴⁴ Augustus had to recognise that a considerable degree of flexibility in the working of the system of social stratification, was required, in fact inevitable, if 'the basic structure was not to be strained and break down into social discontent and revolution.'⁴⁵

Under the Principate, a tension existed between emperor and nobility. The more autocratic the regime, the less dependent was the emperor on the traditional Roman institutions of government. The reign of Augustus saw the deliberate establishment of an administration which the emperor staffed with officials of his own choice. These officials came largely from the Equestrian order, which Augustus had changed vastly and which depended on him for professional advancement and patronage. He also employed freedmen and slaves whose loyalty and diligence he could guarantee above members of those ranks who had political

seating in the theatres and circuses according to the *ordines*. On this see Rawson (1987), 83-114. Under the *lex Julia de ordinibus maritandis* of 18 BC freedmen were forbidden to marry women of senatorial families. The *lex Fufia Caninia* (2 BC) set a limit on the number of slaves who could be given their freedom by will at one time, on the death of their master. The *lex Aelia Sentia* (AD 4) laid down a minimum age of twenty for manumission and also made it more difficult younger slaves to become citizens by fixing conditions for their freedom. The *lex Visellia* (AD 24) prevented the entry of freedmen into the civic magistracies. Manumission of slaves was considered a problem. Early in Augustus' reign it was so commonplace that it was considered a threat to the political security of the state (See Dion. Hal. 4.24.4; Suet. *Aug.* 40.3-4).

⁴⁴ Reinhold (1971), 275.

⁴⁵ Weaver, 3.

ambitions. In the Equestrian order Augustus had created a source of power on which he could rely in the institutional tug-of-war between himself and the senatorial aristocracy. Thus the measures at regulating social mobility contributed to securing Augustus' political position.⁴⁶

The law was further removed from being an instrument of equality. Indeed, for Tacitus the Twelve Tables were the last equitable legislation;⁴⁷ thereafter laws were carried 'per vim ...dissensione ordinum,' initiated and passed by the upper strata, for the benefit of the upper strata, a system which gave birth to a network of legal privilege denied to those of the lower strata who had the misfortune to find themselves in court in the Late Republic before an upper class jury or worse, an upper class judge. Although the criminal justice system was mild in structure, by Augustus' reign it showed itself to be susceptible to corruption and was often plagued by unacceptable delays. The system was in desperate need of reform. This reform did not come suddenly. It was a gradual transformation which did not abolish the formulary system completely, but rendered it redundant during the course of time.⁴⁸

Status was an inherent part of Roman society: 'among Romans, everything depended on status. Several large distinctions received recognition in the courts.'⁴⁹ Nevertheless, this discrimination intensified as the upper strata became more insecure. The innovations introduced in the law meant that the criminal law in particular, became an instrument through which social control, in the political sense, could be gained and retained. In the Empire it became a means of oppression designed to favour the interests of the higher orders in Roman society. A criminal case favoured the upper strata from arrest and indictment to trial and penalty. When a member of the *plebs* was arrested he was thrown into the *carcer* where he was to await trial, if in fact he was lucky enough to have the benefit of one. This was in effect punishment before conviction, an ignominy which members of the upper strata usually avoided. They were often allowed to remain at home

⁴⁶ Cf. Weaver, 14.

⁴⁷ *Ann.* 3.27.1: 'finis aequae iuris'.

⁴⁸ Garnsey (1970), 3.

⁴⁹ MacMullen (1986), 147.

until trial and even given the opportunity to escape or to commit suicide if conviction was imminent. By Hadrian's time the distinction between *honestiores* and *humiliores* was formally enshrined in law and all features of legal equality had long since disappeared. The criminal legislation which was promulgated proclaimed separate penalties for each stratum.⁵⁰

The nature of crimes could vary, however. *Repetundae*, for example, was almost entirely an upper stratum offence, while it would be rare to find a member of the *plebs* charged with *maiestas*. These were crimes most often committed by people of standing with political connections. But what of offences normally found in the lower classes such as vagrancy, petty larceny and minor assault? As the *quaestiones* were not geared for such offences and it is inconceivable that the assembly would be summoned to try such cases, lower class offenders were dealt with summarily.⁵¹ Under the Empire too there was a large amount of *ad hoc* justice meted out to those of the lower strata. The *tresviri capitales* had performed this function during the Republic. These were the magistrates responsible for prison,⁵² and for arresting and incarcerating malefactors. Their role went certainly beyond that of mere police.⁵³ David has shown that they were both judges and executioners and that they controlled the criminal justice of those who did not have sufficient rank to avail themselves of the *quaestiones perpetuae*.⁵⁴

The evidence, however, for the functioning of criminal justice among the masses is scant.⁵⁵ I will argue in a separate chapter⁵⁶ that the masses had very little in the way of legal rights, even though they might have been citizens. There was in all likelihood very little real jurisdiction and probably only summary punishment exercised by magistrates

⁵⁰ See for example *Dig.* 48.8.16. Under the *lex Cornelia de sicariis et veneficiis* murderers, if they were upper class, were deported, but if they were lower class, executed: 'qui caedem admiserunt sponte dolove malo, in honore aliquo positi deportari solent, qui secundo gradu sunt, capite puniuntur.'

⁵¹ Gruen (1974), 364.

⁵² Aulus Gellius 13.12.6; *Dig.* 4.2.

⁵³ On the role of the *tresviri* as police, see chapter 5, p136ff.

⁵⁴ David (1984), 147.

⁵⁵ See Crook (1967), 68: 'As to how the great bulk of ordinary crime amongst the humble folk and slaves in the cosmopolitan alleyways of the city of Rome was dealt with, we are exceedingly ill informed.'

⁵⁶ Chapter 5.

using their *coercitio*. This was the special instrument of enforcement which a magistrate had at hand and covers scourging and execution (by decapitation with an axe), arresting and carrying a disobedient person to prison, imposing a fine.⁵⁷ The factors that were responsible for the low quality of justice for the poor were even more prevalent in the Late Republic and Early Principate. Accused of low status, and even plaintiffs, found accessibility to the courts financially and economically prohibitive. Justice became an expensive, high-status privilege. The result was, ironically, that dispute-resolution was removed from the regulated and controlled atmosphere of a court to the informal arena of the streets where inevitably retroactive measures by the state were required.

In the political sense the people had lost (or abandoned) their recourse to the formal channels of political participation. Communication with authority was now made in the circus and arena where the people expressed their uninhibited opinion without sparing the feelings even of the emperors themselves.⁵⁸ The Games became 'as the people lost its right to elect magistrates and pass laws, political gatherings where public opinion was made known and political demands put forward.'⁵⁹ In 56 BC Cicero wrote that the people could find expression in four different contexts: at assemblies, elections, the theatre and gladiatorial contests.⁶⁰ By the Empire, however, the first two of these had disappeared. The product of this was further polarisation between state and subject and inevitable tension and violence.

SELF-HELP AND THE LAW

As I stated in chapter one the role of the concept of self-help in Roman criminal law cannot be over stressed, and its connection with violence already been mentioned.⁶¹ Since it was in the Late Republic and Early Principate that the greatest change in self-help occurred,

⁵⁷ Nippel (1984), 22.

⁵⁸ Tertullian *Spect.* 16: 'sed circo quid amarius, ubi ne principibus quidem aut civibus parcent?

⁵⁹ Rawson (1987), 83. See also Yavetz (1969), 18ff; Tengström, 43; Hopkins, 1ff; Cameron, 157ff.

⁶⁰ *Sest.* 106. 124.

⁶¹ See chapter 1, p10. However, this is not to say that it was a specifically Roman phenomenon. Indeed, it forms the basis for the law of the ancient world. For a short history of the concept of self-help in the ancient world, see Lintott (1982), 13-33.

which consequently had a profound effect on the nature of the violence of the time, it is essential to concentrate on the role of the concept of self-help in Roman law of this period.

The intrusion of the Roman state into the life of the individual was for a long time minimal.⁶² Any wrong an individual suffered and wanted redressed either by retribution or restitution was left entirely to the individual himself. He could not elicit the assistance of the state. In the Rome of the Kings and Republic the notion of a crime against the state was a foreign one for a number of reasons. Firstly, during the Republic the state as an entity was well-defined in constitutional terms, and the administration had nothing to fear from its subjects. This is to be contrasted with the Empire where Augustus, and to a lesser degree his successors, deliberately avoided the definition of the imperial position in legal, constitutional terms. Unlike the Republic, the Empire did not have a formally structured constitution: any attempt at definition would have exposed all too clearly the fiction of the "restored" Republic. Secondly, the state had no interest in securing or protecting the rights of an individual. Its main concern was politics and the preservation of its position. There was no culture in ancient society of individual human rights being guaranteed by the state in a court of law. What rights were available to the citizen were determined by social status.⁶³ The only right a citizen had in this respect was the right of *provocatio ad populum* which itself underwent evolution to *appellatio ad Caesarem*, a development which offered less sure protection for those who found themselves accused or convicted.⁶⁴ Thirdly, the idea that violations of property or person which occurred between individual citizens constituted an offence against society and the state was, in practice, equally alien.

Thus what would be considered crimes today were originally left to the individual to resolve himself. These were *delicta*, not *crimina* and fell under the provisions of the civil

⁶² See Crook, 259: 'In general the Roman government had a very liberal attitude; on the whole, a free Roman's house was his castle.'

⁶³ The subject of human rights in Rome has been treated by Syme (1991).

⁶⁴ Jones (1972), 105. The only account we have of *provocatio* is that of Paul before Festus which is very confused, and Jones concludes that neither Festus nor his biographer properly understood the legal position. See *Acta Apost.* 25:27, 26:29, 17:1. etc. The issue of *provocatio* will be dealt with in more detail later in chapter 3.

law. Kelly postulates self-help as the origin of Roman civil procedure.⁶⁵ The evolution from *delictum* to *crimen* is of principal concern to us here, because it has profound ramifications for the enquiry on violence. 'There was a constant need during the Principate to define new criminal offences, for the criminal law of the Republic had remained elementary.'⁶⁶

The basic form of self-help, expressed in the legal maxim 'vim vi repellere licet',⁶⁷ 'though gradually modified under the Principate, in the Republic was still an absolute right.'⁶⁸ It extended beyond the scope of mere self-defence to the unilaterally expressed assertion of a personal right without the facility of recourse to the judiciary. In Rome acts of self-help were considered acts of law. In effect an individual, wronged for whatever reason, waged a private war on the person or persons who wronged him.⁶⁹ The foundation for Roman legal procedure, both civil and later criminal, was private action modelled on ritualised self-help.

Whether the issue was retribution or restitution, Roman criminal law rested to a great extent on the concept which Mommsen calls *Blutrache*.⁷⁰ Whether the individual felt himself strong enough, or whether he sought the assistance of the tribe to lend him armed support, self-help was still the primary means of enforcing a claim or repelling an attack. This was a situation which begged intervention from the state. Gradually the State itself began to assume responsibility for the punishment of crimes, and in the development of the private criminal suit 'self-help is completely set aside, and every wrong is subject to the compulsory compensation prescribed by the state for the outraged person.'⁷¹ One of the major reasons for the revolution in the Early Principate of the criminal law was the fact that self-help adversely affected interests beyond the parties in dispute. There was no limit to the quality and extent of the self-help which could be summoned. Gang wars might

65 Kelly, 2.
 66 Crook, 269.
 67 *Dig.* 43.16.1.27 (Cassius)
 68 Lintott (1968), 11.
 69 Strachan Davidson, 38.
 70 Mommsen (1899), 940.
 71 Mommsen (1899), 905.

escalate out of control, a danger which Augustus appreciated.⁷²

It is important to stress that the transition from a system of pure self-help to one where claims were enforced by process of litigation, and thereafter to one where this process was participated in, or at least monitored by, the state, cannot have been achieved overnight. A system of objective judicial decision replaced the use of force as a means of settling disputes gradually. Moreover, the operation of self-help as a method of enforcing law easily led to inequality, as it relied on a "might is right" approach. Central to the notion of self-help is the amount of assistance an individual was able to obtain. The quality of his case could rest not so much on the strength of the evidence or even the extent of the wrong, as on the amount of physical force he could muster against the opposing party. An individual, no matter how much he had been wronged, if he could not summon the necessary physical force, that is to say force greater than that of the opposing party, could not pursue his case.⁷³ Consequently this system was both unjust and irregular preventing weaker plaintiffs from litigating against stronger defendants, as well as encouraging legal action by stronger plaintiffs against weaker defendants who were powerless to resist. Theoretically, therefore, the intrusion of the state into this arena should have been to the advantage of the weaker plaintiff or defendant, as the state, had the physical resources to enforce sanctions on behalf of the weak litigant. This was not so, however. A critical advantage of state intervention in the legal lives of individuals in order to form a criminal law is the consolidation of the state's own political position by controlling legal affairs. This may not have been Augustus' express intention however, even if his initiatives in the field of criminal law did bring some benefit. But they were not only initiatives which changed the contexts in which violence manifested itself, but were also reforms which made it possible for his successors to abuse the criminal system for their own ends.

⁷² Lintott (1968), 130: 'In the late Republic we find an increasing belief among those concerned with the law that violence, especially that involving gangs and arms, is in itself bad, which because of its threat to the public interest cannot be left to private repression but must be subject to jurisdiction. The righting of wrongs is no longer an irrefutable excuse for violence.'

⁷³ See Kelly, 14: 'The only physical sanction of Roman litigation in these periods consisted in such force as the plaintiff was able to muster in order to overbear the actual or possible resistance of a weaker defendant.'

SPECIFIC LEGISLATION AGAINST VIOLENCE IN THE EARLY EMPIRE.

The nature of the social and political situation at Rome in the Late Republic and Early Principate, as well as Augustus' broader political programme of reform, necessitated legislation against violence threatening the state. Augustus had to have the security and freedom to put his social programme into effect. However, legislating against violence was to prove a difficult task. For one thing, there was not much precedent in Roman legal history for legislation of this nature.⁷⁴ For another, any legislative proposal limiting *libertas*, political or otherwise, would not be received well, thus limiting Augustus' freedom to act. The survival of the concept of *libertas* in the principate must not be underestimated. It was a cornerstone of Republican ideology and was one of Tacitus' main themes.⁷⁵ For Syme the word *libertas* carried a precise and legal meaning: the legal status of the citizen as opposed to the slave.⁷⁶ The tension that existed between *libertas* and the accumulation of personal political power was a major issue of interest to the historian of the Early Empire.⁷⁷ Augustus understood very well the importance of the concept of *libertas*. Elizabeth Green phrases Augustus' political dilemma as a law-maker in this way: 'Augustus, while establishing for himself a position of supremacy, realised the need to avoid an undisguised, blatant accumulation of personal power, and to display sensitivity towards the nostalgic regard in which Republican institutions, practices and privileges were held.'⁷⁸ These institutions were encapsulated in the concept of *libertas*.

To ensure maximum efficacy for his social reform and his legislation, Augustus attempted to secure a climate of opinion in which action against *vis* was not regarded as sinister, an attack on *libertas*. Augustus did this by enlisting the aid of poets who, through their work, propagated the myth or belief that Augustus was the agent who would return society to the paradise of the Golden Age. At the beginning of the chapter I set out the view that law was the natural product of the Fall of man from the Golden Age. The Augustan poets were to employ the idea of the return of the Golden Age as a means to mould men's views in the

⁷⁴ See Lintott (1968), 107.

⁷⁵ The principal work on *libertas* is C. Wirszubski's *Libertas as a Political Idea at Rome during the Late Republic and Early Principate*.

⁷⁶ Syme (1991), 185.

⁷⁷ Cf. Morford, 3420.

⁷⁸ Green (1987), 441.

support of Augustus' regime.

In his fourth *Eclogue* Virgil prophesies the return of the Golden Age. It is important to realise that the poem only makes sense against the background of the volatile political atmosphere of triumviral Rome, when it was written. After all, these were grim days of civil tumult where the possibility of a return to war was only too great. Wallace-Hadrill⁷⁹ believes that the *Eclogue* is a 'poetical realisation of a widespread attitude, that the solution lay no longer in republican institutions, but in a Messiah. It is significant that Virgil needed to turn outside the normal Roman ideological vocabulary to express this attitude.' In the *Eclogue* Virgil, although hopeful, offers the reader only fantasy; a wonderful age which depended on the birth of a Saviour, and in which sheep would grow purple wool.⁸⁰ Yet by the late 20s BC, with Augustus in firm control, Virgil could resuscitate the theme and confidently recognise the *princeps* as Saviour. In the *Aeneid* Anchises announces:

hic vir, hic est, tibi quem promitti saepius audis
Augustus Caesar, divi genus, aurea condet saecula...⁸¹

In bringing civil war to an end, Augustus had fulfilled an essential condition of the Return to Paradise. The absence of war was a characteristic feature of the Golden Age. The gates of war were closed and civil commotion, *furor impius*, locked away with all its weapons:⁸²

dirae ferro et compagibus artis
clauduntur Belli portae; Furor impius intus
saeva sedens super arma et centum vinctus aëni
post tergum nodis fremit horridus ore cruento.

However, it is not enough that Augustus restore peace. He has also to abolish the *scelus* or sin from which the Saviour was to deliver his followers. The Roman People could not exist without Augustus, or else they would be overcome by *scelus*. Augustus alone held the keys to Paradise; Augustus alone could offer salvation. For Wallace-Hadrill,⁸³ the "Fall" myth was pressed to an ideological function: that is, to enforce the subjection of every Roman to the person of the emperor. For the Greeks, the myth was to explain the present state of humanity, for Augustans it put the emperor at the centre of things.

⁷⁹ Wallace-Hadrill (1981), 36

⁸⁰ *Eclogues* 4.42-45.

⁸¹ *Aen.* 6.791-3.

⁸² *Aen.* 1.293-296.

⁸³ 1981, 25.

If the Golden Age was a life where laws were not necessary, how did the poets reconcile its return with the security of property, the unequal hierarchy of rank, and the strict legislative structure which the Augustan regime in fact ensured? The possibility of redemption through the abolishment of *scelus* partly solves the dilemma. Horace's picture of *scelus* from before Actium shifts to Augustus' struggle to secure acceptance for a programme of moral legislation. After its passing in 18 BC, Horace states optimistically, 'mos et lex maculosum edomuit nefas.'⁸⁴ The poet is not only writing propaganda for a legislative programme, but associates the *scelus* of immorality, lust and greed with the *scelus* of civil war, the termination of which is not strictly a military affair, but a religious crusade against sin that results in expiation. Augustus' laws helped achieve that. They ensured a society which could not be improved 'quamvis redeant in aurum/ tempora priscum.'⁸⁵ Ovid specifies the nature of Augustus' role as Saviour:

quodcunque habitabile tellus
sustinet, huius erit; pontus quoque serviet illi!
pace data terris animum ad civilia vertet
iura suum legesque feret iustissimus auctor⁸⁶

Tacitus, however, writing a century later, subverts the official ideology. More realistically, he states that the laws were enforced by compulsion, by the hated method of employing the hated *delatores*. Augustus' moral legislation is a bitter bondage, in complete contrast to the voluntary pattern that was characteristic of the Golden Age.⁸⁷ Nevertheless, the context for Augustus' new society was established. He engaged the help of poets to obtain support for his regime and his laws. It was so successful that 'the association of the reigning emperor with a return of the Golden Age became a recurrent topic in poetry, imperial panegyric and the official coinage and it continued to fertilize the imperial ideal long after the classical period.'⁸⁸

However, of all the legislation passed during this time I propose to discuss only two laws

⁸⁴ *Carm.* 4.5.22.

⁸⁵ *Carm.* 4.2.39-40.

⁸⁶ *Met* 15. 830-33.

⁸⁷ *Ann.* 3.28. see p1.

⁸⁸ Wallace-Hadrill (1981), 22.

which illustrate well the disintegration and change of the criminal process during the Early Principate. Consequently they have a direct bearing on our investigation into the violence of the Early Principate. The first law, the *lex maiestatis* was exploited much for the realization of political ends, and its record in the reigns of Augustus and Tiberius will show a definite pattern of growing state violence executed against its subjects for offences which cannot objectively be considered threatening to the security of the state or the well-being of its citizens.⁸⁹ This is theoretically what a treason law strives to do. The second law is the *lex Julia de vi publica et privata*. Here the nature of the violence which the law was intended to address and the character of the state's response to it, is evident. Further, it also indicates a state attitude to violence, in broader terms, as a social malady.⁹⁰

THE *LEX JULIA MAIESTATIS*.

If any legislative measure made a direct contribution to an atmosphere of violence in the Early Principate, it was the *lex maiestatis*. I do not intend to discuss the substance of the law in any detail, but rather to focus on those aspects of the law which had a major and violent impact on Roman society.

The law of treason of any nation and its application can be considered a good barometer of how a state perceives itself, as well as of the extent of its security. It is not unusual that a state which either is, or considers itself to be, under threat should employ its laws of treason more frequently and arbitrarily than those states which are politically secure. A law of treason takes its motivation specifically from the political sphere. It relates directly to the authority of the state and its legitimacy. 'Traditionally, the most heinous crime which could be committed in a political community was treason - action aimed at the death or overthrow of the King - where allegiance was owed to the person of the sovereign who embodied the state.'⁹¹ For if law is the sphere *par excellence* of social and political control, the law of treason is the specific legitimate measure which validates state oppression. Thus treason as a political offence against the state is a special category of

⁸⁹ E.g. prosecution for urinating while wearing a ring with the emperor's image on it. See Suet. *Tib.* 58.

⁹⁰ See chapter 1.

⁹¹ Macfarlane, 108.

criminal offence which serves to differentiate one sort of state from another, with respect to the range of offences, the types of case brought, and the way in which they are handled. Even the most "liberal" states have political offences such as conspiracy, incitement, mutiny, sedition and treason. Because the offences are political they are vulnerable to imaginative interpretation and application. In modern Western states their use is subject to two safeguards: firstly, that the charges must be plausible in terms of the political climate and environment of the society concerned, and secondly that they must be openly substantiated in court.⁹² But the law of treason also relates to the definition of a state, and in this context, I will argue that a vagueness and uncertainty of this definition was partly responsible for the trend of institutional violence which was to become such a characteristic of imperial politics. We shall see that neither safeguard was evident in the Early Principate, and that the inevitable consequence was autocratic, arbitrary, and therefore violent government. The *lex maiestatis* saw a great prominence during the reigns of Augustus and Tiberius, even during the good phase.⁹³

The first problem concerning the law is its dating. This need only be dealt with briefly, as the question has been settled to a large extent by Allison and Cloud.⁹⁴ It is clear that the law is not Augustan but in fact Caesarian: 'as for an Augustan *Lex Julia Maiestatis*, it is a mirage, an unnecessary fiction which should disappear from our history books, unless some more cogent testimony to its existence is forthcoming.'⁹⁵ However, it needs to be mentioned if only to counter Atkinson's thesis that there was an Augustan *lex* dated 18 BC, which marked a decisive break by Augustus with the old Republican framework.⁹⁶ But the fact is that by Augustus' accession the *lex maiestatis* was already being used and was 'in ill-repute a quarter of a century before the foundation of the Principate.'⁹⁷ It is the difference in application and interpretation of the law which is of particular relevance to violence.

92 Macfarlane, 76.

93 *Ann.* 4.6.2: 'legesque, si maiestatis quaestio eximeretur, bono in usu.'

94 Allison/Cloud, 711. Cf. Levick (1979), 361.

95 Allison/Cloud, 724.

96 Atkinson (1960), 456ff.

97 Levick (1976), 184.

The first *maiestas* law, the *lex Appuleia*, which had been passed at the end of the second century BC, was directed at those who diminished the majesty of the Roman people. It covered sedition, incompetence in the field and unauthorised campaigning. Yet by the end of Tiberius' reign the charge of *maiestas* was being used principally for the elimination of political rivals. Also, since it was a law which admitted the validity of evidence obtained under torture, it became an instrument for the detection of other crimes. The law underwent a definite evolution from its application in the Republic to cases of sedition, armed action, conspiracies and the like, to the Empire where the law encompassed libel, slander and desecration of images. This extension of *maiestas* was significant and unwelcome to upper class Romans and showed the shift in the balance of power in the state.⁹⁸

Tacitus' assertion that Tiberius revived the treason law,⁹⁹ is not strictly correct. Rather the law was being subjected to wide interpretations in order to accommodate a more devious political purpose, that is to protect the emperor's power from whatever threat or perceived threat, legitimate or illegitimate. Tacitus uses the cases of Falanius and Rubrius as examples of the beginning of this 'gravissimum exitium' which had been insinuated (*inrepserit*) on Roman politics, 'dein repressum sit, postremo arserit cunctaque corripuerit.' It is clear that Tacitus also appreciated the danger of this law.¹⁰⁰

A particular danger of Roman *maiestas* laws was their vagueness which gave the opportunity for convenient interpretation. The law was very broadly defined: 'maiestas autem crimen illud est, quod adversus populum Romanum vel adversus securitatem eius committitur.'¹⁰¹ The problem of vagueness and the consequence of malicious interpretation and application was not specific to the Roman Empire. Even under the Republic the scope

⁹⁸ See Chilton, 75.

⁹⁹ *Ann.* 1.72.2: 'nam legem maiestatis reduxerat, cui nomen apud veteres idem, sed alia in iudicium veniebant, si quis proditione exercitum <a>ut plebem seditionibus, denique male gesta re publica maiestatem populi Romani minuisset: facta arguebantur, dicta inpune erant.'

¹⁰⁰ *Ann.* 1.73.1.

¹⁰¹ *Dig.* 48.4.1.1.(Ulpian) Allison/Cloud (712) warn that the *Digest* is to be handled with caution as a source for Roman Public law under the Late Republic or Early Empire.

of the law was very wide and afforded ample opportunity for malicious political prosecution.¹⁰² Indeed, in a letter to Appius Claudius Pulcher in 50 BC Cicero himself states that the law is vague and ambiguous.¹⁰³ However, it was certainly in the early years of the Empire that the *maiestas* law came into its own as a means of dictating the course and style of Roman politics and government.

As long as the definition of *maiestas* was sensible, the application of the law could, but not necessarily would, yield fair and just results. Under the Principate the attitude and actions of the *princeps* himself were crucial. That one person could have such discretion in the law's interpretation and application was indeed an unhealthy development and led to the faith in the legal system as a whole being undermined, especially in Tiberius' reign. Augustus could treat political enemies with some level of tolerance. Indeed, Suetonius mentions that for circulating a damaging libel on Augustus, a crime that would surely have earned him the death sentence forty years later, Junius Novatus was only fined.¹⁰⁴ The publication and distribution of defamation and slander did not initially trouble the emperor.¹⁰⁵ However, Tacitus rightly marks the key stage in the evolution of the *maiestas* law with the case of Cassius Severus.¹⁰⁶ The interpretation of 'specie' is critical here, because it shows clearly that the law at the time (AD 8) had nothing clear to say about libel or scandal. As a result of the *cognitio*¹⁰⁷ system and without having to alter the wording of the Caesarian law, Augustus was able to extend the scope of the law. Once this disturbing precedent had been set, it became impossible to return to the old rule of law.

Even Tiberius did not allow himself initially to be affected adversely by lampoons and

¹⁰² Levick (1976), 183.

¹⁰³ *Ad Fam.* 3.11.2. 'Verum tamen est maiestas, etsi Sulla voluit, ne in quemvis impune declamari liceret, <ambigua>.' In *De Inventione*, on stressing the strategic importance of defining the charge before court Cicero aptly uses the example of *maiestas* to illustrate his point: 'cum est nominis controversia, quia vis vocabulandi definienda verbis est, constitutio definitiva dicitur.' See *Inv.* 2.52-55.

¹⁰⁴ Suet. *Aug.* 51.1.

¹⁰⁵ Suet. *Aug.* 55: 'etiam sparsos de se in curia famosos libellos nec expavit et magna cura redarguit ac ne requisitis quidem auctoribus id modo censuit, cognoscendum posthac de iis, qui libellos aut carmina ad infamiam cuiuspiam sub alieno nomine edant.'

¹⁰⁶ *Ann.* 1.72.3: 'primus Augustus cognitionem de famosis libellis *specie legis eius* tractavit'.

¹⁰⁷ See chapter 3.

slander, and asserted the right of free speech.¹⁰⁸ Yet later, Suetonius was able to catalogue a whole range of far-fetched accusations from beating a slave to carrying a ring or coin bearing Augustus's image into a toilet or brothel.¹⁰⁹ Tacitus also observed the disquieting trend in the application of the law to such an extent that he could state with a hint of sarcasm: 'adolescēbat interea lex maiestatis.'¹¹⁰ This was an introduction to the case of Appuleia Varilla who was indicted for speaking insultingly about the divine Augustus.¹¹¹ By AD 21, according to Tacitus, a charge of *maiestas* complemented every prosecution.¹¹²

In this regard two aspects have a definite bearing on the violence of the Early Principate. Firstly, the conduct of these cases depended in far too great a degree on the personal attitude of the Emperor. It was, for example, only through the personal intervention of Tiberius that Lucius Ennius was saved from prosecution for *maiestas*.¹¹³ Tiberius, in the case of Appuleia Varilla, had to insist that a distinction be drawn between disrespectful remarks made about Augustus, and those made about himself.¹¹⁴ This *maiestas* against a deified *princeps* Levick considers 'the first and obvious novelty of the new Principate.'¹¹⁵ In an excess of rhetoric Pliny even claims that Tiberius deified Augustus for the very purpose of employing the law.¹¹⁶

The second aspect which requires mention is the impact the transfer of jurisdiction over the administration of the *lex maiestatis* to a Senatorial court in 19 or 18 BC had on Roman criminal law and politics. This transferral took place as a result of the trials of Primus and Murena, but was not absolute. Only the top cases were selected for trial in the house so

¹⁰⁸ Suet. *Tib.* 28. See also Tac. *Ann.* 2.50.2. The *senatus consultum de Pisone patre* now shows that by AD 19 oral insults against the emperor were accepted under the law.

¹⁰⁹ *Tib.* 58.

¹¹⁰ *Ann.* 2.50.1.

¹¹¹ Tac. *Ann.* 2.50. Appuleia Varilla was not convicted of *maiestas* although Tiberius did ask the Senate to extend the law to cover insults to the dead Augustus.

¹¹² *Ann.* 3.38.1: 'addito maiestatis crimine, quod tum omnium accusationum complementum erat.'

¹¹³ Tac. *Ann.* 3.70.1: 'L. Ennium equitem Romanum, maiestatis postulatum quod effigiem principis promiscuum ad usum argenti vertisset, recipi Caesar inter reos vetuit'.

¹¹⁴ *Ann.* 2.50.2.

¹¹⁵ (1976), 191.

¹¹⁶ Pliny *Pan.* 11.1. 'dicavit caelo Tiberius Augustum, sed ut maiestatis crimen induceret.'

that the maximum political effect could be achieved. Consequently trials involving the welfare and security of the state and Senate were to be heard in the house. This development led naturally to irregularity, because although some of the procedural rules laid down in the *leges* were maintained, the Senate was allowed to conduct itself much as it wished.¹¹⁷ These irregularities provided the *princeps* and other senators with opportunities for personal intervention, which made a mockery of the rule of law. It is clear that, given the political implications of a *lex maiestatis*, the Senate was not able to adapt properly to the responsibilities of a court of law. 'The Senate's freedom to adjust its own procedures amounted in the last analysis to freedom to break the fragile restraints imposed by judicial formality. The Senate forgot that it had taken on the responsibilities of a court of law and acted like the political body it really was.'¹¹⁸ Moreover, far-fetched cases were brought in order either to please the *princeps* in a most sycophantic fashion or to eliminate political and personal rivals "through the back door".

This leads to another aspect of the *lex maiestatis* which contributed directly to the violence of the Early Principate. This is the growth of the *delatores* as factor in the bringing of cases of *maiestas*.¹¹⁹ Criminal cases were brought not by a public prosecutor in the employ of the state, but by individuals, and often by the complainant himself. In the case of *maiestas* these were often senators. The ramifications of this were threefold. Firstly, because of the scope of the law, political as well as personal rivals could be attacked without too much trouble. Thus the court became an arena for the satisfaction for personal squabbles. Secondly, for the *delator* who brought a charge of *maiestas* there were financial rewards.¹²⁰ A flood of accusations in the criminal court resulted, naturally intensifying the insecurity of the senatorial class and creating an atmosphere of fear which effectively neutralised free, political, cultural and social activity. Political opposition, therefore, more readily took on a violent aspect in the form of sedition or conspiracy.

¹¹⁷ The role of the senatorial court in Roman criminal law, will be discussed later. See chapter 3.

¹¹⁸ Levick (1976), 199.

¹¹⁹ On this see Bauman (1974), 53ff; and Sinnigen.

¹²⁰ Rewards were paid to informers whether freeman or slave. The slave could be rewarded with his freedom as well.

The role of the *delatores* must not be underestimated. Delation was a constant factor in the history of internal security not only during the Republic, but throughout both the Principate and the Late Empire.¹²¹ Suetonius attests their influence: ‘nullus a poena hominum cessavit dies....Decreta accusatoribus praecipua praemia, nonnumquam et testibus. Nemini delatorum fides abrogata. Omne crimen pro capitali receptum, etiam paucorum simpliciumque verborum.’¹²² Nevertheless they were not considered with any favour. Under the Principate the *delatores* were hated because of their activities. They acquired the *princeps*’ favour and their prosecutions brought them wealth and status while an atmosphere of fear was created.

It is hardly surprising, given this atmosphere, that there was a high rate of suicide among the upper class in these years. But since it was the upper class who were mostly subject to the *lex maiestatis*, and since our evidence is strongly biased towards the upper classes, we do not know if suicide was a widespread reaction to condemnation in the *maiestas* court. In the reign of Tiberius, Tacitus mentions ninety-five individuals who had been charged under the *lex maiestatis*.¹²³ A further twenty-three were mentioned as being involved in judicial proceedings other than the *maiestas* law. Of these twenty-three, six committed suicide; of the ninety-five charged with *maiestas*, twenty-one took their own lives before the court could convict them, while forty-two were found guilty. Eighteen of these were executed, according to the law.¹²⁴ It would perhaps be erroneous to read too much into these figures. One must take into account that suicide in anticipation of conviction prevented the dead person’s property from being confiscated, as well as preserved him from *damnatio memoriae*, because he had died uncondemned. ‘Suicide was one way of accepting death as the price of virtue.’¹²⁵

Notwithstanding this, there is another aspect which requires attention. Grisé discerns a marked increase in the incidences of suicide for the period 100 BC to AD 100 among the

¹²¹ Sinnigen, 69.

¹²² *Tib.* 61.3

¹²³ The following statistics are derived from B. Walker (1952), 263-267.

¹²⁴ Levick 1979, argues that the penalty for treason was, in fact death.

¹²⁵ Griffin (1986), 74.

upper class, and attributes this to the fact that their lives were most affected by the political upheavals of the period.¹²⁶ It can be argued that the number of suicides committed in the context of *maiestas* reflects a disillusionment and loss of faith not only in the *maiestas* law, but indeed in the entire criminal process.¹²⁷ One must question though, whether we have the evidence to make a valid comparison with other periods.

The *lex* was also abused because it eventually became a means of gathering evidence for other charges.¹²⁸ An accuser would indict a person on a *maiestas* charge in the full knowledge that his prosecution might fail. However, through an Augustan edict of AD 8 a slave's evidence under torture might be accepted. This might produce evidence for other charges which could then be instituted, thus allowing the original *maiestas* charge to fall away. Bauman suggests that this caused the *crimen maiestatis* to become the lynchpin in the entire system of criminal justice. The evidence of the slave in cases of *maiestas* meant that in effect, the *lex maiestatis* would provide the evidence for a charge under a different *lex* which did enjoy the similar privilege of being able to extract evidence under torture. Although the offences of adultery and census frauds offered similar facilities the *lex maiestatis* had particular elasticity.¹²⁹

The impression that the *lex maiestatis* made on Roman politics and upper class society, indeed on society in general, was vast. The resultant implications for violence, are obvious. For Seager the operation of the law with all its consequences was a symptom of a diseased society for which the principate as an institution must take the blame.¹³⁰ From a different angle Bauman holds that the *crimen maiestatis* through its ability to be a creative instrument as well as a repressive one, contributed significantly to the institutionalisation of the Principate. It was the criminal law which assumed a degree of ingenuity and flexibility never exceeded in all its long and varied career.¹³¹

¹²⁶ Gris , 53-57.

¹²⁷ Cf. Talbert, 479: 'the frequency with which defendants committed suicide before the completion of their hearing indicates how they might feel doomed in such circumstances.'

¹²⁸ On this see Bauman (1974), 21, 54ff.

¹²⁹ Bauman (1974), 58.

¹³⁰ Seager, 161-162.

¹³¹ Bauman (1974), 225.

THE LEX JULIA DE VI.

The formulating of a law against violence was problematic, as the history of the *leges de vi* bears witness.¹³² What the *Digest* calls the *lex Julia de vi publica*¹³³ and *lex Julia de vi privata*¹³⁴ are the results of sixty years of development and constitute the ultimate refinement. As most of the major clauses of the *lex Julia de vi publica* have Republican precedents,¹³⁵ why and in what respect did these laws require revision or refinement? What was added to or subtracted from the preceding laws? And how did the law evolve to the form presented in the *Digest*?

In its time the *lex Plautia*¹³⁶ had been passed to satisfy a need for further, more comprehensive legislation. The *lex Lutatia* (promulgated in 78 BC specifically to deal with the *seeditio* of Lepidus) had proved too narrow because it applied only to citizens who engaged in *seeditio* against the state. It provided for a *quaestio perpetua* which could be used whenever there was a *seeditio*, but it did not have a permanent *quaesitor* of its own. It was then recognised that acts of private violence, especially when directed against public figures or involving public issues, also concerned the state. The *lex Plautia*, therefore, regulated the *crimen vis* by introducing the relevant *quaestio (de vi)* and authorised it to deal with cases of private violence as well.¹³⁷ In 52 BC the *lex Pompeia de vi* was passed in specific response to the violent disturbances of 52 BC which were the result of electoral corruption and competition. It was instituted as an *ad hoc* measure, to take a firm and definitive stance on the recent disturbances and to simplify the procedures established by the *lex Plautia* which were perceived as clumsy, ineffective and time-consuming. Trials under the *lex Pompeia* were to be models of efficiency with severe penalties. Thus the law allowed for proceedings to be carried out *extra ordinem*. However, Pompey did not intend

¹³² See also chapter 1, p11-13 for a brief summary *à propos* of the Roman approach and attitude to *vis*.

¹³³ *Dig.* 48.6.

¹³⁴ *Dig.* 48.7.

¹³⁵ Lintott (1968), 123-124.

¹³⁶ Cloud (1988), 579, places the law at about 70 BC. Gruen, 227, agrees. Lintott (1968), 122) is less committal, placing the law at any time between 78 and 63 BC. Lintott's chapter on the Republican legislation against violence discusses the history of these two laws at length. For a thorough discussion on the measures *de vi* in the Late Republic, see Labruna, 13-27.

¹³⁷ *Cael.* 70: 'vis contra privatos'.

abrogating or replacing the procedures of the *lex Plautia*. They remained in force. This is proved by the fact that Milo was charged under both laws. Pompey's law was purely an expedient passed for the sake of some dramatic gesture for the preservation of public order.¹³⁸ Although it was an *ad hoc* measure it is unlikely that it would ever have been repealed. Once on the statute book its usefulness as a device for the speedy removal of a perpetrator would have favoured its retention. Nevertheless, it remained an extraordinary measure. These expedients which began as *ad hoc* measures would eventually entrench themselves as permanent criminal legislation in the Empire.

So we come to the *lex Julia de vi*. Is the law as it stands in the *Digest* of Augustan or Caesarian origin or did both legislate? Yavetz, for example, dates a law (or laws) tentatively to 47 or 46 BC,¹³⁹ while Cloud, in the most detailed and persuasive treatment of the question, accepts the reasonable probability of a Caesarian *lex*, but postulates a subsequent Augustan *lex de vi* on which the *Digest* title *Ad legem Juliam de vi publica* (48.6) is based.¹⁴⁰ *Philippics* 1.23 is the critical text for the proof of both a Caesarian *lex* and the Augustan authorship of a subsequent *lex*. Cicero asks a rhetorical question of Antony: 'quid quod obrogatur legibus Caesaris quae iubent ei qui de vi itemque ei qui maiestatis damnatus sit aqua et igni interdici?' Cicero argues here that Caesar had made it expressly clear that those convicted of *vis* and *maiestas* by the *quaestio* should suffer the penalty of *interdictio aquae et ignis*. Thus when Antony promulgated a law that those convicted *de vi* and *de maiestate* may appeal, if they should so wish,¹⁴¹ he cannot, (as Cicero points out) claim to be carrying out the deceased Caesar's desires. It is inconsistent. Therefore only *vis* and *maiestas* are relevant to Cicero's argument. Cloud defeats Kunkel's attack¹⁴² on the existence of a Caesarian *vis* and *maiestas* statute in three ways. Firstly the context of this section of the *Philippics* (16-26) are the *acta Caesaris* and those forged by

¹³⁸ Gruen, 236.

¹³⁹ Yavetz (1983), 77. He concedes that it is not only not possible to determine the exact date of the law's origin, it is also not certain that Julius Caesar promoted such a law.

¹⁴⁰ 1987, 82-83. See also Cloud (1988), 579-582.

¹⁴¹ *Phil.* 1.21: 'ut de vi et de maiestate damnati ad populum provocent, si velint.'

¹⁴² Kunkel, *RE* XXIV. col.79 *quaestio*. He argues that Cicero is here not referring to Caesarian *leges de vi* and *maiestatis*, but to an otherwise unknown chapter of Caesar's *lex repetundarum* of 59 BC in which Caesar laid down *interdictio* as the penalty for persons convicted of *vis* and *maiestas*.

Antony. These are the *acta* of Caesar's dictatorship and not of his consulship of 59 BC when the *lex de repetundis* was passed. Secondly, Cloud can find no reason why Caesar should have included penalties for *vis* and *maiestas* in a *lex repetundarum*. Thirdly, Cicero's use of the plural in *legibus* and *quibus*,¹⁴³ indicates convincingly that Cicero here is referring to two *leges*; one *de vi*, and the other *de maiestate*. The 'itemque' renders rhetorical use of the plural unlikely. Having established this, Cloud believes that the only difference between the Caesarian law and its predecessor, the Plautian law, may be the specification of the penalty as *aquae et ignis interdictio*. The essential questions therefore, must be firstly what is the date of the last *lex Julia*, and secondly, how did it differ from the laws which preceded it?

Cloud,¹⁴⁴ following Coroï, postulates an Augustan authorship of the law with a promulgation date between 19 and 16 BC.¹⁴⁵ If Caesar's law changed only the penalty the *provocatio* clause¹⁴⁶ was a subsequent significant addition. Cloud uses this clause to argue that the *lex* must be dated between the publication of Livy Book 10 and the accession of Tiberius.¹⁴⁷ His argument rests on two pillars. Firstly, if the *provocatio* clause had been Caesarian, why did Cicero not use it against Antony's promulgation of a law permitting *provocatio* against an adverse verdict by the *quaestio de vi* when at the same time Antony was claiming to implement Caesar's wishes? Lintott¹⁴⁸ cannot see Cicero missing the chance in *Phil.* 1.22-3 of denouncing Antony for granting *provocatio* to someone who had himself ignored it. Secondly, Cloud invokes Livy 10.9.4, where the historian says that the Porcian statute of 300 BC on *provocatio* is the only, and not simply the first, to have teeth in it. Due to his interest in the subject, Livy would most certainly have mentioned the *lex Julia* clause had it been passed into law at the time. The earliest possible date for Livy Book 10 is 27 BC, thus inducing the conclusion that the *provocatio* clause was not law before that date. This position is strengthened by Luce¹⁴⁹ who argues convincingly that

¹⁴³ Kunkel, 1.23.

¹⁴⁴ Cloud (1988), 594.

¹⁴⁵ Coroï, 141 - 143. Cf. Lintott (1972), 265. n.213, for a date of 18-17 BC.

¹⁴⁶ *Dig.* 48.5.7.

¹⁴⁷ Cloud (1988), 585-586.

¹⁴⁸ Lintott, (1972), 265. n.213.

¹⁴⁹ Luce, 209 -240.

Book 9 (and therefore the second pentad) was written before 23 BC. We would not therefore, expect mention of the *lex Julia de vi* in Livy's *provocatio* excursus. It does, however, widen the possible date for the *lex* in giving us three more years before 19/18 BC. Moreover the *provocatio* clause of the *Pauli Sententiae*¹⁵⁰ involving the phrase *ad populum* would be hopelessly anachronistic in any piece of legislation after AD 14, when there was no comitial court to which to appeal.

Cloud correctly ridicules Coroï's argument that because the *lex Julia de vi (privata)* and the *lex Julia de adulteriis* are the only two criminal laws to carry the same punishment (confiscation of a third of a convicted party's property) they must have been passed at the same time.¹⁵¹ Nevertheless, the dating proposed by Coroï, Lintott and Cloud is plausible. Augustus had returned from the east in 19 BC, while in 16 he left for Gaul, leaving him three years in which to consolidate his position at Rome. Furthermore, 18 BC was a year of great legislative activity. Particular events of the time may have persuaded Augustus to look seriously at the question of law and order, not only in a social sense but also in a political sense. The events that occurred between 22 BC and 18 BC helped the *princeps* secure his position among the common people who had adopted a somewhat ambivalent attitude towards him. There were, for example, riots at the consular elections of 21 BC.¹⁵² Natural disasters such as plague and famine brought violent mass disturbance. The conspiracy of Caepio and Murena¹⁵³ had awakened Augustus to the possibilities of rebellion. The Egnatius Rufus episode of 19 BC emphasized the need to clarify matters.¹⁵⁴ In the same year consular elections again witnessed riots and disorder¹⁵⁵ of the kind that necessitated the Pompeian measures. Under 18 BC Dio writes of anonymous plots although

¹⁵⁰ PS. 5.26.1 'lege Julia de vi damnatur, qui aliqua potestate praeditus civem Romanum antea ad populum, nunc imperatorem appellansem necaverit...'

¹⁵¹ Cloud, (1988), 587.

¹⁵² Dio 54.6.1. Dio's comment on this episode is interesting: 'This episode made it clear that it was impossible for a democratic system of government to be carried on among them (the people of Rome), for even though they possessed little power either in the electoral process or in the conduct of the offices of state, they fell to rioting'.

¹⁵³ See. Suet. *Aug.* 19.1 Tiberius was the prosecutor (Suet. *Tib.* 8). See also Dio 54.3 and Vell. Pat. 2.91.2-3. Best dated to 22, see Badian. See also Raaflaub and Samons, 418-422 and 425-426.

¹⁵⁴ Suet. *Aug.* 19.1; Vell. Pat. 2.91.3-92.4; Dio 53.24.4-6; Sen. *Brev.* 4.5; Tac. *Ann.* 1.10. See Raaflaub and Samons, 418-422 and 427.

¹⁵⁵ Dio 54.10.1-2.

they are not confirmed by other authors and his introductory words 'after these events, many immediately and many later...' are suspiciously vague.¹⁵⁶

Such events are the perfect background for legislative action against public violence, especially when considered in the insecure constitutional and political context in which Augustus found himself. From 30 BC there had been continual attempts at conspiracy. Raaflaub and Samons¹⁵⁷ believe that political resistance to Augustus at this time was relatively small and could not compare with that of his Julio-Claudian successors. But this is debatable. Opposition to Augustus was not, as they allege, of low intensity. It was real, and Augustus' political task was difficult. He can be seen as hostile to the senate: on the one hand his reforms of the senate had won him many enemies and on the other he can be considered as playing the democrat in his capacity as the holder of *tribunician* power and using the threat of popular support to keep the senate in check. The situation was such that these years were critical to Augustus' political survival, and he realised this by embarking on a programme of reform and legislation of which the *lex de vi* was part.¹⁵⁸

What must now be addressed is the title of these laws in the *Digest*. Lintott suggests that the distinction between *vis publica* and *vis privata* was an Augustan invention.¹⁵⁹ Cloud, who postulates a unitary Augustan law, rejects a separation by Augustus in favour of a theory that it was a device of the classical jurists of the second and third century AD and that the distinction relates only to differences of penalty:¹⁶⁰ *vis publica* had to do with forms of *vis* which deserved *interdictio* and later *deportatio*,¹⁶¹ while *vis privata* concerned less serious forms of *vis* which merited the loss of a third of one's property only and the disabilities which attached to *infamia*.¹⁶² Moreover, Cloud argues that 'what was later

¹⁵⁶ Dio 54.15.1.

¹⁵⁷ See Raaflaub and Samons, 417-444.

¹⁵⁸ On the importance of the tribunician power to Augustus, see Lacey, 28 - 34, who argues that the *tribunicia potestas* underwent a major development in 18 BC when it was used as an instrument for introducing legislation. Augustus acted through his tribunician power to demonstrate that it was not just an empty title, but that it could be used to curb the extravagance of the rich which must have given offence to the impoverished masses of the *plebs*. For a differing view see Griffin (1991), 24-32.

¹⁵⁹ Lintott (1968), 107.

¹⁶⁰ Cloud (1988), 595.

¹⁶¹ *Dig.* 48.6.10.2.

¹⁶² *Dig.* 48.7.1. and 48.7.8.

regarded as *vis privata* constituted a very small part of the substantial Augustan law and such offences were attached to graver analogous but capital offences, thus making it more difficult for jurists in later centuries to distinguish them.¹⁶³ Distinctions as to content are more difficult to sustain for, as Cloud says, for example, 'it is quite impossible to draw any theoretical distinction between the *vis publica* material in 48.6 and the *vis privata* material in 48.7.'¹⁶⁴ If distinctions are to be drawn, *vis publica* can generally be said to concern specific efforts at *sedition*. Consequently it aimed at regulating the possession of arms in public, and having an armed gang collected for the purpose of sedition or conspiracy.¹⁶⁵ This need not be conspiracy against the state, as such an offence would be covered by the *lex maiestatis*. *Vis privata*, on the other hand, concerned violence by unarmed gangs as well as other crimes of violence and offences of self-help where due process of law should have been engaged.

It is in this sphere where the *lex* is valuable. The Roman appreciation for the rule of law is indicated twice in the *lex Julia de vi privata*: 'legis Juliae de vi privata crimen committitur, cum coetum aliquis et concursus fecisse dicitur, quo minus quis in ius produceretur.'¹⁶⁶ A duly constituted court is postulated as the only and final authority for the settlement of disputes. Also interference with the working of justice is considered in a very serious light. These sentiments are reinforced later in the *lex* as shown by the definition of violence: 'Caesar dixit: "tu vim putas esse solum, si homines vulnerentur? vis est et tunc, quotiens quis id, quod deberi sibi putat, non per iudicem reposit. non puto autem nec verecundiae nec dignitati nec pietati tuae convenire quicquam non iure facere. Quisquis igitur probatus mihi fuerit rem ullam debitoris non ab ipso sibi traditam sine ullo iudice temere possidere, eumque sibi ius in eam rem dixisse, ius crediti non habebit."¹⁶⁷ Apart from underlining the Roman view that violence was not restricted to the infliction of physical harm,¹⁶⁸ this passage shows the growing importance of judges, making evident an increasing infiltration

¹⁶³ Cloud (1988), 594-5.

¹⁶⁴ Cloud (1988), 592.

¹⁶⁵ It is difficult to see how the clauses relating to *stuprum* (*Dig.* 48.6.3.4, and *Dig.* 48.6.5.2.) are relevant here. They seem most incongruous under this heading.

¹⁶⁶ *Dig.* 48.7.4.

¹⁶⁷ *Dig.* 48.7.7.

¹⁶⁸ See chapter 1, p13.

into civil law by the state. This is helped also by the broad definition which *vis* is given in the statute.

Another aspect to this legislation is the definition of arms: 'telorum autem appellatione omnia, ex quibus singuli homines nocere possunt, accipiuntur.'¹⁶⁹ This is also a very broad definition which allowed state authorities, should they so wish, to act arbitrarily. There is a problem however, which betrays the awkwardness of the way in which the law is expressed. In the very next clause the right of Romans to carry weapons for the sake of self-protection is recognised: 'qui telum tutandae salutis suae causa gerunt, non videntur hominis occidendi causa portare.' There is no indication how the difference between self-protection and 'hominis occidendi causa' is to be determined. This aspect is accentuated by another part of the law which states 'armatos non utique eos intellegere debemus, qui tela habuerunt, sed etiam quid aliud nocere potest.'¹⁷⁰ Strictly, then, any collection of men, armed or not, who are able to inflict damage may be held liable under *vis publica*.

What are the Augustan additions to this particular *lex*? It must be assumed that much of the law came down to Augustus in *tralatitium* form. The contribution which Augustus made to these particular laws (or law) is critical. Cloud deals with this in detail in his second article on the *lex Julia de vi*.¹⁷¹ I will focus on Augustus' major contribution to the law, the clause relating to *provocatio*.¹⁷² In essence this section ensured the *ius provocationis*. Its inclusion in the *lex de vi publica* gives the *lex* a dimension beyond its original target, *seditio*, and looks also to administrative violence. Augustus seeks to regulate the jurisdiction of magistrates. Cloud, however, ignores the ideological significance which Augustus would without doubt have exploited. Protection of the people rather than control over senatorial governors would have been stressed publicly.

Provocatio was an important feature of Roman criminal law. Its history is long and

¹⁶⁹ Dig. 48.6.11.1.

¹⁷⁰ Dig. 48.6.9.

¹⁷¹ Cloud (1989), 427-65.

¹⁷² Dig. 48.6.7.

relatively well documented.¹⁷³ Originally, a Roman citizen threatened with corporal punishment could invoke the help of the people (*provocatio ad populum*), unless he had previously been found guilty in a formal trial. This right of appeal was formally recognized in 300 BC by a *lex Valeria*. In the Late Republic, however, *provocatio* fell into disuse and lost much of its importance 'partly because of the growth of the *quaestio perpetua* which rendered helpless the man who wanted to appeal, partly because in the intenser political struggles the senate was reluctant to give its political opponents the benefit of it. This lack of respect for *provocatio* reflects the reluctance of the politicians of the Late Republic, unlike their forbears, to compromise.'¹⁷⁴ As *provocatio* had a political significance, its reassertion in the *lex Julia de vi publica* in the Principate is all the more important. In Augustus' reign we have an excellent context for the introduction of the *provocatio* clause. Indeed, the clause shows Augustus, having received the *tribunicia potestas* in 23 BC, as seizing the opportunity to present himself as guardian of the people. 'The significance of Augustus' inclusion in the *lex de vi* of denial of *provocatio* by a magistrate should not be underrated, since it demonstrated the *princeps*' intention not only to do something about the maltreatment of Roman citizens in the provinces but, as importantly, to introduce a stronger element of control over the activities of provincial governors and their staffs. Whatever the origins of *provocatio* and its early history, the institution was clearly a victim of the weakening of social controls that occurred at Rome when the mechanisms of shame culture suffered partial failure.'¹⁷⁵

¹⁷³ See Lintott (1972).

¹⁷⁴ Lintott (1972), 262.

¹⁷⁵ Cloud (1989), 434.

CHAPTER THREE

VIOLENCE AND STRUCTURAL CHANGES IN THE ROMAN CRIMINAL LAW AND PROCEDURE

INTRODUCTION

Since Romans had such a sophisticated appreciation for the law and the role it plays in society, an investigation of violence in the Early Principate cannot be complete without some attention being given to the structure and form of Roman criminal law and procedure. This particularly true if we understand criminal law as the social mechanism that is used to coerce members of society, through threat of pain and suffering, to abstain from conduct which is harmful to the interests of society. Its object is to promote the welfare of society and its members by establishing and maintaining peace and order. I shall argue that in the Early Principate this social mechanism was not used solely for the interests of society, nor for the promotion of its welfare, but to secure the *princeps*' position in Roman politics and society. This encompassed radical departures from the Republican structure and form partly because the Republican system was inadequate in helping Augustus (and his successors) to attain a position of political security, but also because the system itself was ineffective in combatting the kind of violence that was characteristic in Late Republican society.

Criminal trials during the Republic took place within a specific structure according to specific rules of procedure. They were brought by an individual, were investigated by an individual without any assistance from any government agency such as the police, and eventually were heard by a jury court. This structure was to change radically during the Early Principate, as the state took a greater interest in its citizens' affairs.

The single innovation which revolutionised the functioning of Roman justice during the Principate was the introduction of the process known as *cognitio*. I shall argue that it was developed as a reaction to the political circumstances of the time. *Cognitio* facilitated greater participation by the state in criminal trials. Its introduction was gradual, but it eventually undermined the jurisdiction of the jury courts which, by the Severan period, had

become redundant.¹

In the time of the Twelve Tables, the state punished only treason, murder and arson. By the Late Republic, which saw the culmination of this system, offences had expanded and some were categorised as "public" and were tried by "public" jury-courts set up by the people. This system was to be subverted by the new *cognitio* procedure which signalled the end of private vengeance, which had hitherto formed the basis for the Roman criminal law. It also underlined or advanced the principle of the state's responsibility to administer criminal justice.

CRIMINAL PROCEDURE IN THE LATE REPUBLIC

To contrast *cognitio* with the procedures of the jury-courts in the Late Republic, illustrates better the significant impact it made on Roman procedural law. A fairly precise knowledge of the procedure of these courts has come to us through the speeches of Cicero. The whole process of trial was officially initiated neither by a presiding magistrate nor by a public prosecutor. This was always done through *nominis delatio* by a private person who laid the information either before a competent judicial magistrate or, in certain cases, before a *consilium* formed from the judges of his *quaestio*. If the information was accepted, the person laying the information acquired the rights and duties of a litigant. To him fell the duty of convicting the accused of the crime before the court. Every good citizen of good reputation was, theoretically, allowed to initiate a prosecution. This aspect must be compared with the private suit of the Twelve Tables which was available only to the injured or aggrieved party, or (in the case of killing) to his kin.

Naturally the motives of prosecutors in bringing cases stretched beyond the public interest and the mere urge for vengeance. Enmities which had nothing to do with the crime in question had also a role to play; avarice, too was a factor. Criminal statutes promised considerable rewards for the victorious prosecutor.² Consequently, many made a business

¹ See Garnsey (1966), 157.

² In the case of capital condemnation for example, the property of the condemned person was confiscated, of which the *delator* received a sizeable proportion. See Kunkel (1966), 64. In the Republic, the *quadruplatores* obtained recompense for various laws such as *repetundae* and *ambitus*. Cf. Plaut. *Pers.* 1.2.18; Cic. *Verr*

of instituting prosecutions, a trend which, in the Empire, was to reach a scale never attained in the Republic.³

If the information was accepted by the magistrate, a *consilium* was then ordered. This was a sworn jury, chosen by lot from the *album* of the *quaestio* concerned, which decided the innocence or guilt of the accused. In the course of this selection both parties had the right to reject a certain number of judges. The number of members of this *consilium*, which was sworn in before commencement of the trial, varied at different times and according to the *quaestio* concerned, but might be as high as seventy-five.

The trial itself was dominated by the accuser who called prosecution witnesses and led their evidence. Similarly, the accused was permitted to lead his own evidence and witnesses. Both parties were allowed the right of cross-examination. The judges were forbidden to speak to each other and listened to the evidence in silence. The presiding magistrate confined himself to regulating the proper conduct of the trial. In this he was usually very tolerant. The rules of Roman criminal procedure offered the accused an impressively wide scope for the making of his defence. He could have as many as six advocates appearing on his behalf. Express statutory provisions accorded generous speaking time to them and their clients which amounted to half as much time again as there was at the disposal of the prosecution.

The *consilium* conveyed its verdict through voting tablets which were placed secretly in an urn. Equal votes secured acquittal; a large number of abstentions meant a fresh trial. The judicial magistrates announced the verdict according to the *consilium*'s vote. In principle, no punishment was pronounced at this stage. This would be dictated by the statute on which the prosecution was based. Only fines required an assessment, a task which was performed by the *consilium*, which had to meet again after the verdict for this purpose.⁴

2.2.8. In the Empire, it was mainly in matters which touched the *crimen maiestas* that the *delator* or prosecutor won compensation for successful prosecution. Cf. Tac. *Ann.* 4.30.3; Sen. *Ira* 2.7.3.

³ The *delatores* have already been discussed. See also chapter 2, p53f.

⁴ On the monetary fine see chapter 4, p114ff.

The execution of punishment was seen to by the presiding magistrate. In the last century of the Republic, with the exception of parricide, persons condemned by the *quaestio* procedure no longer suffered the death penalty. These were persons who, as a rule, were much later to be regarded as *honestiores* and were members of the upper class. Instead, the magistrate gave them an opportunity to escape into exile.

Although it would appear that it would guarantee an accused a fair trial, the jury-court system could allow favouritism in at least two ways.⁵ For example, the court could bring in a not-guilty verdict when acquittal was not justified, or the magistrates could fail to carry out a sentence passed on a defendant who had been found guilty. The first could only be achieved with difficulty because it required interference with the majority of jurors. The second does not attach to the trial itself before conviction. The quality of evidence, though, is such that we know very little of the standard of justice administered by these courts; and jury-courts had their limitations. The size of the juries made trials clumsy in selection procedures alone and they became unmanageably complicated affairs, susceptible to intolerable delays. Also litigation became prohibitively expensive. In the Late Republic disenchantment with aspects of the system became evident. Although the author of the *Epistula ad Caesarem* did not condemn outright the *iudicia publica*, he did disapprove of jury selection on a high property-qualification, and suggested larger juries drawn from the whole of the first class.⁶ In Cicero's *De Legibus* no mention is made of *iudicia publica* in the ideal republic. Criminal jurisdiction went back to the magistrates and assembly. Another fault of the jury system was that in certain circumstances a man could be tried twice for the same offence. This was often exploited in political trials. However the chief defect of the *iudicia publica* was corruption of jurors, which was said to have been rampant in the senatorial courts under the *lex Calpurnia*. In particular, the system made the speedy resolution of justice impossible. Jurors' deliberations and voting procedures to determine guilt or innocence were factors which did not hinder a *iudex* during the course of a trial, or prevent his decision at the end of it.

⁵ Garnsey (1970), 4.

⁶ *Ep. ad Caes.* [Sallust] 7.11: 'sed de magistratu facile populi iudicium fit; iudices a paucis probari regnum est, ex pecunia legi inhonestum. Quare omnes primae classis iudicare placet, sed numero plures quam iudicant.'

COGNITIO AND THE CRIMINAL PROCEDURE OF THE EARLY PRINCIPATE

Cognitio, the procedure most characteristic of the imperial judicial system, made a radical impact on the jury-court system at both trial and sentencing stages. It eventually became applicable in the trial of all offences, as the distinction between *delictum* and *crimen* slowly declined in importance. In the Republic the *praetor* simply presided over the contest between accuser and accused and pronounced the jury's verdict. The *cognitio* system, being inquisitorial and unlike the accusatorial jury-court system, affected a trial in two crucial aspects: in court procedure and in sentencing. Before conviction the judge was now free to interrogate the accused and cross-examine witnesses, a task which had hitherto been reserved for the prosecution or defence. After conviction, the judge was able to vary the penalty according to the seriousness of the crime and according to his own whim and fancy. He was no longer bound by statutory penalties nor by the counsel of his advisers whom he had a discretion to consult.⁷ Limits to punishments were subject only to reason and not law and he was thus free to choose penalties not stipulated by statute.⁸ Judges who tried cases *extra ordinem*, that is outside the procedures established by statute and tradition, enjoyed complete discretion as to penalties, thereby increasing greatly the variety of punishments available. The only limits were those laid down by imperial mandates or rescripts.⁹ This eventually resulted in the dual penalty system under the Roman Empire.

This kind of inquisitorial system can operate very well (as it does in European criminal law), if the presiding officer is someone trained in law and who realises that there are limitations and dangers to his involvement, and therefore acts in good faith, taking into account, when he arrives at his decision, that such participation in a trial renders the risk greater of a personal and not a legal decision. However, these precautions were not always observed in the Empire. There was, therefore, a greater danger than previously of undue prejudice against the accused. The situation was tolerable as long as there was no political agenda involved. Unfortunately, *cognitio*, when compounded with the other legal

⁷ Cf. Garnsey (1970), 6.

⁸ See *Dig.* 48.19.13 (*De Poenis*): 'hodie licet ei, qui extra ordinem de crimine cognoscit, quam vult sententiam ferre, vel graviolem vel leviolem, ita tamen ut in utroque modo rationem non excedat.' (Ulpian)

⁹ Jones (1972), 108.

innovations of the Principate, made inevitable political judgements as well as unreliable and inconsistent ones. Also the rules of procedure, which attempted to guarantee consistent decisions in the *iudicia publica*, did not bind those who judged according to *cognitio*.¹⁰ This growing interference by the Emperor could result in the tarnishing of the quality of justice, because the outcome of a trial depended not on the vote, after debate, of a body of jurors, but on the whimsical judgement of a single man who may or may not have had legal expertise. In practice there are cases where justice was meted out by the Emperor in a way that the jury system could not have,¹¹ but these were exceptions. Moreover, those who presided over the special courts, such as the *praefectus urbi*, where *cognitio* also applied, were closely linked with the emperor. Thus although the emperor could only judge a limited number of cases personally, he nevertheless was able to delegate judicial powers to officials over whom he could exercise control.

There is, however, another dimension to *cognitio*. In the previous chapter I mentioned that Augustus' legislative programme took place against the ideology of the return to the Golden Age in which the *princeps* was to be seen as Saviour.¹² Clemency was an essential requirement if the emperor was to succeed as Saviour. For Seneca, cruelty multiplies an emperor's opponents, while *clementia* achieves security.¹³ *Cognitio* afforded the emperor a splendid opportunity to display *clementia*. Suetonius, for example records that there are numerous proofs of Augustus' *clementia* and *civilitas*.¹⁴ The advantages of pardoning his political enemies are obvious. But Junius Novatus and Cassius Patavinus, both plebeians escaped with a fine and a mild form of exile respectively, for offences that would have meant execution in Tiberius' reign. Augustus interfered in the prosecution of one Aemilius Aelianus, and dropped the whole inquiry.¹⁵ In the case of Gaius Cominius, a Roman Knight convicted of a slanderous poem, Tiberius was also able to demonstrate *clementia*. Tacitus records this as *modica laetitia*.¹⁶ But Augustus did not confine his *clementia* to

¹⁰ Cf. Jones (1972), 94.

¹¹ For example Suet. *Claud* 15.1-2.

¹² Wallace-Hadrill (1981), 19-36.

¹³ *Clem.* 1.8.6.

¹⁴ On *civilitas* see also chapter 2, p31.

¹⁵ Suet. *Aug.* 51.1-2.

¹⁶ Tac. *Ann.* 4.31.1-2.

members of the upper class. A slave who had complained of him in the vilest terms was punished merely by being put in irons - 'non ultra compedibus.'¹⁷ The important feature of *cognitio* was that the emperor, as judge, stood above the law, and could interpret the law following the dictates of his conscience, and not the rigid prescriptions of the statute book, when ascertaining guilt or assessing penalties. In this way *cognitio*, with the emperor as judge, contributed significantly to the ideology of the emperor as Saviour.

The principate of Augustus witnessed the evolution of three entirely new criminal courts at Rome: i) the emperor himself acquired a judicial role, functioning as a court; ii) the Senate now became a court of law as it had never before been; and iii) the court of the *praefectus urbi*, which derived its *imperium* through delegation from the emperor.

THE SENATORIAL COURT

The senate's role as a court must be seen in the wider context of its newly defined and acquired role in the Augustan regime. This has been dealt with by Brunt,¹⁸ who has rectified the tendency of other authors to concentrate on the powers of the emperor, thereby affording little attention to the senate's role in the wider political and administrative picture. The emperor has thus been credited with powers he did not possess. For Brunt, although Augustus had in effect established a monarchy, and although general initiative and ultimate control rested with Augustus, it was still necessary to obtain senatorial approval for his measures. Indeed, it was important for both Augustus and Tiberius to preserve the forms of the old Republic, so far as that was compatible with the retention of personal power, but also to do all he could to make his policies acceptable to upper-class opinion, which was represented in the senate, and at times perhaps to confirm that opinion. Consultation with the Senate minimised the possibility of its alienation, and facilitated Augustus' hope that he might retain the senate's approval until the end of his reign.¹⁹ Thus Augustus achieved a government of consent which was likely to be more durable. Further advantages were that dialogue with the senate afforded the opportunity to

¹⁷ Suet. *Aug.* 67.1.

¹⁸ Brunt, (1984), 423-444.

¹⁹ Suet. *Aug.* 28.2: 'quid habeo aliud deos immortales precari quam ut hunc consensum vestrum ad ultimum finem vitae mihi perferre liceat?'

the Emperor of gauging the unspoken feelings of members.²⁰ Also it was wise to rule with the consent of the order from which the emperor drew most of his chief advisers and agents. At the very least the senatorial proceedings allowed the emperor to justify and publicise his policy.

The trend of communication with the senate was carried beyond the reign of Tiberius. Indeed, in the first twelve years of his reign, Tiberius could not have been more diligent in consulting and attending the House.²¹ His retirement to exile at Capri in AD 26 proved politically imprudent for this reason alone. Despite the fact that supreme authority remained firmly in Tiberius' hands, and despite a tense and uneasy relationship with the senate (which was exacerbated by his absence from Rome), Talbert²² claims that Tiberius had neutralised the possibility of a damaging decline in the scope and nature of the business to be handled by the corporate body. The prospect of decline into insignificance was averted and the senate continued to be recognised as the symbol of the *respublica*, the institution which transcended individual rulers. The nature of the senate's role which Tiberius had encouraged the senate to assume set a pattern which was not to be modified for well over a century and a half.

During the reign of Augustus, many new functions fell to the senate. Brunt writes²³ that in the acquisition of these new functions whether judicial, legislative or electoral, the senate became grander to outward view, just when it was losing that *auctoritas* by which it had previously exercised a generally accepted control over the state in republican conditions. It was in the judicial sphere, however, where the senate saw its greatest change which was certainly an innovation of Augustus. The senate did not sit as a court during the Republic,

²⁰ See Tac. *Ann.* 2.38.4: 'haec atque talia, quamquam cum adsensu audita ab iis, quibus omnia principum, honesta atque inhonesta, laudare mos est, plures per silentium aut occultum murmur exceperere. sensitque Tiberius.'

²¹ See Tac. *Ann.* 4.6.2-3: 'iam primum publica negotia et privatorum maxima apud patres tractabantur, dabaturque primoribus disserere, et in adulationem lapsos cohibebat ipse; mandabatque honores nobilitatem maiorum, claritudinem militiae, inlustres domi artes spectando, ut satis constaret non alios potiores fuisse. sua consulibus, sua praetoribus species, minorum quoque magistratuum exercita potestas; legesque (si maiestatis quaestio eximeretur) bono in usu.'

²² Talbert (1984), 489.

²³ Brunt (1984), 424.

even though it is said to have taken part in the sentencing of two men who had allegedly conspired against Octavian during the irregularities of the Second Triumvirate.²⁴ The conviction of the disgraced Egyptian prefect Cornelius Gallus in 26 BC was specifically left by the senate to the courts, but it passed condemnatory decrees against him to prejudice the proceedings.²⁵ The charges of *maiestas* against M. Primus, Fannius Caepio and Varro Murena were similarly heard not in the senate as would almost certainly have been done thirty years later, but in the regular *quaestio de maiestate*.²⁶ Moreover, although Augustus in 2 BC reported Julia's immoral behaviour to the senate, he did not ask it to sentence her or her lovers.²⁷ Augustus did, however, ask the senate to approve the sentence of exile on Agrippa Postumus in AD 7 which he had imposed.²⁸

Nevertheless, by the 20's AD the senate was a regular and well established court, a function which was to become one of its most important and time consuming. The earliest evidence available for such a role comes from late in Augustus' reign. Jones²⁹ suggests that by the time of Ovid's famous complaint to Augustus from exile in 8 AD, the senate was a normal court which 'could be spoken of on a par with the *iudicia publica*.' Under the same year Dio remarks that 'Augustus allowed the senate to try most cases without him.'³⁰ Also, in AD 8 or 12,³¹ Cassius Severus was banished by the senate to Crete for defamation.³² In about AD 13 the senate condemned Volesus Messalla on charges of *saevitia*, *repetundae*, and possibly *maiestas*.³³

²⁴ Re the *praetor* Q. Gallus ἡ δὲ βουλὴ κατεγίνωσκε θάνατον (Appian *B.C.* 3.95; cf. Suet. *Aug.* 27.4). The consular Salvidienus Rufus was, according to Dio (48.33.3; cf. Suet. *Aug.* 66.2), accused in the senate by Octavian himself, but that may be preliminary to a trial in a proper court despite Suetonius' words.

²⁵ Suet. *Aug.* 66.2; Dio 53.23.7.

²⁶ Suet. *Tib.* 8; Dio 54.3.2-4.

²⁷ Vell. Pat. 2.100.3-5; Sen. *Clem.* 1.10.3; Tac. *Ann.* 3.24.4; Suet. *Aug.* 65.2-3; Dio 55.10.12-16.

²⁸ Suet. *Aug.* 65.4.

²⁹ Jones (1972), 91. *Tristia* 2.131-2: 'nec mea decreto damnasti facta senatus, nec mea selecto iudice iussa fuga est.'

³⁰ 55.34.2.

³¹ For discussion on the date see Bauman (1974), 28-31. See also Syme (1978), 213-214.

³² Tac. *Ann.* 1.72.3; 4.21.3; Dio 56.27.1.

³³ Tac. *Ann.* 3.68.1.

Both Jones³⁴ and Garnsey agree that the evidence for the senatorial court is comparatively well documented and unequivocal. Garnsey ascribes this to the fact that judicial murder and the fall of important political figures form part of Tacitus' main theme of the misuse of law by politicians,³⁵ and it was in the senatorial court where this mostly took place. The senatorial court became, therefore, the arena in which politics took precedence over justice. This contributed significantly to political insecurity and a climate of fear in the upper stratum of Roman society. On the other hand, references to the public jury courts are few,³⁶ just enough to confirm their existence and we are therefore in the dark as to how criminal justice was administered to those of the lower strata. Neither the jury courts nor the urban prefect could have handled political offenders, certainly not those of high status who constituted a greater threat to political security.

It is unclear exactly how the senate evolved into a formal court of law.³⁷ Lack of evidence makes the discovery of the precise legal basis of this new function difficult. Jones³⁸ has argued that the senate (and for that matter the emperor) could only have assumed capital jurisdiction through the promulgation of an enabling *lex*. Talbert³⁹ suggests that no formal or systematic explanation for the development is appropriate. It is worth noting, however, that besides formal trials, the senate also conducted judicial investigations involving miscellaneous offences or other matters which fell beyond the ambit of official or statutory criminal law but within the limits of the maintenance of law and order. The senate visited punishment on individuals for a wide range of crimes including *vis publica* and *privata*, *sacrilegium*, *iniuria* and *calumnia* as well as negligence which had led to the deaths of thousands of spectators at the gladiatorial games. Moreover, the senate invoked sanctions against various groups, such as Jews, devotees of Isis,⁴⁰ astrologers,⁴¹ whose activities and

³⁴ Jones (1972), 91.

³⁵ Garnsey (1970), 17.

³⁶ The so-called *senatus consultum de Pisone patre* now confirms the operation of a non-senatorial *quaestio maiestatis* in AD 20.

³⁷ Bauman (1980), 146, considers the origins of the senate's criminal jurisdiction only marginally relevant. But he does lay out the various arguments, including a majority view that postulates a gradual *de facto* evolution.

³⁸ Jones (1955), 464-488.

³⁹ Talbert, 462-3.

⁴⁰ Tac. *Ann.* 2.85.4. These measures were also reported by Jos. *A.J.* 18.65-84; Suet. *Tib* 36. Josephus reports two scandals which according to him, precipitated the punishment of the followers of Isis and Judaism. In the first, a gullible Roman lady

existence were considered threatening to the religious and political life of the state. In addition, it moved against other groups for acts of disorder and violence, for example, actors and their followers in AD 14 and 15,⁴² the citizens of Italian Pollentia and Pontic Cyzicus.⁴³ In these cases senatorial decrees did not come at the end of formal trials. They were administrative acts rather than judicial sentences, promulgated by the senate in its traditional capacity as administrative organ of government and not in its new found function as a court. In this regard one should not neglect the senate's role as an agency for the maintenance of public order with which the senate was concerned at least until the end of the first century.⁴⁴ But the measures it passed in response to matters brought before it were reactive rather than preventive. Consequently precautionary steps against the recurrence of trouble were generally ineffective.

It is not difficult to understand why the senate came to have jurisdiction over these matters and why the jury courts became less competent to deal with them. For instance, the trial of Vibius Serenus, governor of Hispania Ulterior in AD 23,⁴⁵ our only known record of a charge of *vis publica*, is to be explained, according to Garnsey,⁴⁶ on the analogy of the *repetundae* trials involving governors. The senate also exercised the functions of a judicial commission of enquiry as it did in the case of the Fidenae disaster of AD 27 in which 50,000 people lost their lives.⁴⁷ In theory, the freedman-profitier Atilius, whose jerry-built

had been raped in the temple of Isis with the connivance of the priests. In the second, a convert to Judaism had been induced to send valuable gifts to the temple in Jerusalem, which were stolen by the four Jews with whom she had dealt. In either case, the husbands, as men of influence, approached the *princeps* who expelled the Jews from Rome, demolished the temple of Isis, threw her statue into the Tiber, and crucified the priests. For Goodyear (Vol.2, 441) this is a good story but not the whole truth. 'A minor fraud by a few individuals is no credible reason for penalising a whole community.' Rather, what caused Tiberius to depart from Augustus' policy of toleration towards the Jews was that he was concerned over the success of their proselytism, and Oriental religions were now making converts of the upper classes.

⁴¹ Tac. *Ann.* 2.32.3.

⁴² Tac. *Ann.* 1.77. Measures included praetorian powers to have ballet dancers flogged; limitations on actors' salaries; prohibitions against senators entering the houses of ballet dancers and against knights from escorting them in public, as well as performances outside the theatre. See chapter 6.

⁴³ Suet. *Tib.* 37.2-3.

⁴⁴ Talbert, 386.

⁴⁵ Tac. *Ann.* 4.13.2. Tacitus does not tell us exactly what Serenus did.

⁴⁶ Garnsey (1970), 30.

⁴⁷ Tac. *Ann.* 4.63.1-2. The senate decreed that the exhibition of gladiatorial shows could only be held by someone financially qualified to do so, and that no

wooden amphitheatre was responsible for such a catastrophe, might have been punished by the urban prefect rather than the senate. But the disaster was considered so outrageous that only the senate could have jurisdiction. The appearance of Annia Rufilla (who had previously been convicted of fraud) before the senate⁴⁸ in AD 21 is explained by the distinction between crimes which are self-evidently scandalous (like the Fidenae affair), and crimes which can be called scandalous merely because of the status of those involved. C.Cestius had complained that he could not gain access to the Forum without facing the threatening abuse of Annia Rufilla (who thought she could protect herself by clutching the image of the emperor). Drusus was begged to set an example, and Rufilla once convicted was clapped into gaol. Garnsey believes it is safe to assume that a non-senator in a similar position would have had to proceed against his tormentor 'by the cumbrous processes of the civil law.'⁴⁹

Even before the senate came to sit regularly as a court matters of a semi-judicial nature fell within the scope of the House's business. These matters were usually brought by embassies and private members and occasionally resulted in hearings. Consequently, the distinction between the judicial and non-judicial business of the House became less defined. The formal and regular trials of individuals within the house during the latter years of Tiberius' rule particularly mark a significant step beyond such business, but Talbert⁵⁰ argues that this development was understandable and that Augustus can be seen to have offered the necessary encouragement. He did not intend the senate to share in the ordinary routine of criminal jurisdiction - this was the function of the jury courts - but it was in matters beyond the normal routine that Augustus consulted the senate. Slowly senatorial jurisdiction began to emerge and contemporaries were not concerned to find a strict legal basis for it. For Talbert,⁵¹ such 'lack of concern reflected the wider constitutional uncertainty of the age. Romans accepted this particular innovation for the same reason that they acknowledged the legislative force of *senatus consulta*: both developments enjoyed the

amphitheatre could be constructed except on ground of proved solidity. Atilius was banished.

⁴⁸ *Ann.* 3.36.1-4.

⁴⁹ Garnsey (1970), 32.

⁵⁰ Talbert, 463.

⁵¹ Talbert, 464.

approval and recognition of the emperor.' In the development of the senatorial court a means had been devised through which the senate, which had lost a considerable amount of its political power to the emperor, could express itself and a means by which upper class opposition could be neutralised by that class itself.

It is hardly surprising, therefore, that the cases which the senate most often heard were those of *maiestas*. This was often accompanied by other charges too.⁵² The operation of the *lex maiestatis* has already been discussed.⁵³ However, we are prevented by lack of evidence from knowing how far the other courts were taking such cases. Garnsey writes that the barest trickle of cases went to the *quaestio* and that it must have been virtually automatic for accusers to lodge charges of *maiestas* with the consul or emperor rather than the praetor, and for the accusations, once accepted, to be heard in the senate.⁵⁴ The reason for this was that the senate was pre-eminently responsible for crimes against the state particularly when an accused was a person of status. This position, however, has been much undermined by the *Senatus Consultum de Pisone Patre* which clearly indicates the existence of a *quaestio de maiestate* at the time of Piso's suicide in AD 20.⁵⁵ Accused of lower status may have been despatched to the lower court in numbers and simply have not attracted the interest of senatorial and Equestrian authors.

Repetundae trials were also almost entirely heard by the senate.⁵⁶ However, after the *senatus consultum* of 4 BC,⁵⁷ the *quaestio de repetundis* too, seems to have become a dead letter. It was in charges of this nature that the senate could demonstrate its judicial independence since *repetundae* was not a crime against the state. Nor was the emperor likely to feel that his personal interests were threatened and the senate enjoyed remarkable freedom from imperial interference in *repetundae* cases. In *maiestas* cases, on the other hand, where the emperor could feel his safety and interests jeopardised, the senate was

⁵² Tac. *Ann.* 3.38.1 : 'addito maiestatis crimine, quod tum omnium accusationum complementum erat.'

⁵³ See chapter 2.

⁵⁴ Garnsey (1970), 19.

⁵⁵ *S.C. de Pisone Patre*, column 3.

⁵⁶ See Garnsey (1970), 19-21.

⁵⁷ *FIRA* 1 68 V. See Sherk, 27-9.

seldom left free to decide independently. The emperor would consider it vital that his views be known and expected them to be adopted. The senate, when deciding a *maiestas* case, frequently looked to the emperor's wishes. His attitude was of paramount importance and he failed to encourage senatorial independence. As a result the realisation of justice was seriously compromised, not merely because it hinged on the personal perspective of the emperor.⁵⁸

Another crime which the senate heard regularly was adultery, that is violations of the Augustan laws of 18 BC. Adultery was not an obviously political crime, however, even though Augustus had emphasised that adultery with a princess of the royal house was akin to *maiestas*.⁵⁹ Charges of adultery were usually linked with other charges such as *maiestas*. When the emperor was in attendance, his interventions often assisted the accused, e.g. in the case against Appuleia Varilla.⁶⁰ When the emperor was away however, such as during Tiberius' retirement to Capri, the additional charges tended to remain as devices for securing either the execution or suicide of the accused. It was a means employed by senators of eliminating personal and political opposition. It is Garnsey's view⁶¹ that the senate heard adultery cases because of the special significance which both Augustus and Tiberius attached to the adultery law. They saw the law as having outstanding importance for the preservation of the social and political order. Certainly for Augustus the law was an integral part of his social legislation designed to rehabilitate marriage.

Court procedure was another way in which justice was jeopardised in the senatorial court. Although there never seems to have been any comprehensive statute governing the conduct of hearings, the senate took over from the jury-courts the recognised manner in which cases were heard. Levick⁶² recognises that the senate did retain some of the procedural

⁵⁸ For example Tiberius revived the trial of Vibius Serenus (who had previously been prosecuted for *vis publica*, see Tac. *Ann.* 4.13.2) based on a personal grudge of eight years standing. See Tac. *Ann.* 4.28-29.

⁵⁹ See Tac. *Ann.* 3.24.2.

⁶⁰ Tac. *Ann.* 2.50.1-3. Appuleia Varilla suffered the traditional penalty for adultery rather than the harsher penalty prescribed by the Julian law. Tiberius had earlier quashed the *maiestas* charges against her. See also Garnsey (1970), 37

⁶¹ Garnsey (1970), 22.

⁶² Levick (1976), 185.

rules laid down in the *leges*, but adds that it was still free to conduct itself much as it wished. Divergences from the norm in the course of trials and opportunities for intervention by the *princeps* were the natural results.⁶³ Talbert holds that despite this 'the senate's wider powers and functions did offer the opportunity for flexibility in certain circumstances, and this was exercised though it was by no means always to the advantage of defendants.'⁶⁴ What were these wider powers and functions? In the first place there was the aspect of interpretation, firstly by its verdicts in trials before it and by decrees arising otherwise than in the course of such trials.⁶⁵ Verdicts passed by the senate created a dangerous precedent for lower courts. Secondly, the senate was interpreting legislation which it had passed itself. This is an unsatisfactory state of affairs. Ultimately, the senate had a freedom to adjust its own procedure which amounted to freedom to break the fragile restraints imposed by judicial formality. The senate as legislative organ assumed for itself the power 'both to reduce and increase the severity of the laws.'⁶⁶ Soon the senate abdicated its responsibilities as court of law, and acted as a political body in its own interests.⁶⁷ A further inherent fault in the senatorial court was the House's remarkable power of discretion to accumulate charges under different laws or to hear them separately, and to accept new charges as well as those on the statute book. Also it had wide discretion on sentencing. The inevitable consequences were arbitrary legislation, convenient interpretation and a loss of faith not only in the senate as a political body but also as a court of law. The number of suicides in anticipation of conviction in the senatorial court can serve to prove this.⁶⁸

The senatorial court played a significant role in relation to the "violence" of the Early Principate. It must be stressed, however, that those defendants who found themselves in the senatorial court were either senators themselves or at least members of the upper stratum of Roman society. Nevertheless the judicial character of the senate gave it wider

⁶³ Extreme examples of this are the cases of Titus Sabinus and Sejanus both of whom were hustled away to execution in AD 28 and AD 31 respectively (Tac. *Ann.* 4.70.1).

⁶⁴ Talbert, 487.

⁶⁵ Bauman (1980), 147.

⁶⁶ Pliny *Ep.* 4.9.17: 'et mitigare leges et intendere.'

⁶⁷ Levick (1976), 199

⁶⁸ See chapter 2, p54ff.

scope in the maintenance of public order. It was through the senate, by means of extensive consultation that the emperor was able to control and impose himself on Roman politics and society.

THE COURT OF THE EMPEROR

For Jones,⁶⁹ the evidence for the emperor sitting as a criminal court is weak and anecdotal. Dio has the story about Maecenas watching Augustus sitting as judge; believing that he was about to impose the death sentence, Maecenas flung a note into his lap which read 'Rise at once, executioner!'⁷⁰ Suetonius relates an incident of Augustus, trying a case of parricide for which the penalty was to be thrown off the Tarpeian Rock sewn up in a sack along with a snake, a dog, a monkey and a cockerel,⁷¹ asking leading questions to prevent the accused from confessing. In the same chapter Suetonius records Augustus handing jurors a third tablet other than the normal ones of condemnation and acquittal, which afforded witnesses to a forged will, who had signed in ignorance, the opportunity of escaping the punishment of the *lex Cornelia*.⁷² This was not a substantive innovation in the Roman criminal law, Honoré says, but just a 'tidy minded way of securing a special verdict.'⁷³ In a third story from Suetonius the *princeps* was trying Aemilius Aelianus, a Corduban, on an unspecified charge, and reprimanded the accuser for trying to prejudice him by alleging that the accused has spoken abusively of him.⁷⁴ A more circumstantial story is provided by Dio under the year AD 10. A *quaestor* accused of murder approached Germanicus to be his advocate. In the belief that he would exercise undue influence in a normal *quaestio*, the accuser asked Augustus to take the case himself, believing that with the emperor he would have a better chance of a conviction.⁷⁵

It is perhaps misleading to speak of an imperial court in the formal sense. Certainly, there was no formal legislation which empowered the emperor to act as a court of law. What must be investigated then, is the nature of the great and far reaching impact which the

⁶⁹ Jones (1972), 92.

⁷⁰ Dio 55.7.2. (7 BC)

⁷¹ Aug. 33.1. See Dig.48.9.9.*praef.* See chapter 4, p130.

⁷² Aug. 33.2.

⁷³ Honoré, 2.

⁷⁴ Aug. 51.2.

⁷⁵ Dio 56.24.1.

princeps and the Principate made on legal affairs. The advent of the emperor's role in legal affairs was precipitated as much by the unsatisfactory state of criminal and civil law in the Late Republic, as by the need to acquire social and political control for himself. The legal system had evoked widespread dissatisfaction at the beginning of the principate. The *ius ordinarium* was considered excessively formalistic, inflexible and characterised by unacceptable delay. The *quaestiones perpetuae* were slow moving, expensive and corrupt. The emperor was expected to remedy the situation, and bring equity into the legal system and in general to provide a higher authority for law. For Garnsey 'imperial jurisdiction was less a conscious creation of Emperors than a response to popular needs and discontents.'⁷⁶

This does not mean to say, however, that this aspect of the emperor's duties was not exploited in the political sense. The emperor's control of court proceedings and his influence as a judge was nevertheless limited by two factors. Firstly, however diligent the emperor was, he could not hope to act as judge in all the disputes referred to him. This meant that he was forced to choose the matters in which he would act as judge. Those matters which did not reach the emperor's court, were delegated to subordinate authorities, either individuals appointed to make *ad hoc* decisions in special cases or special officials permitted to settle single cases or entire classes of cases, or to officials who already had jurisdiction competent to try the kind of cases now sent down to them. The issue of delegation, was therefore essential to the maintenance of political control, because these delegated authorities owed their allegiance to the emperor alone.

This applies not only to the court of the *praefectus urbi*, but also to other delegated jurisdiction such as the senatorial court, 'in the particular sense that individual cases were sometimes passed down by the emperor to the senate for trial, and in the general sense that the senatorial court was promoted by the emperor and remained under his direct or remote control.'⁷⁷ Secondly, the cases which the emperor did hear were those whose defendants were of the upper classes, so the impact that he made as a judge was restricted. Cases involving the lower strata were dealt with either on an *ad hoc* basis by the *praefectus urbi*

⁷⁶ Garnsey (1970), 65.

⁷⁷ Garnsey (1970), 91.

or by a *quaestio perpetua*.⁷⁸

The role of emperor as judge was from the beginning of the principate an established and essential part of his duties as emperor.⁷⁹ It was a role that was complex and developing, and one which the emperors took very seriously. Augustus often sat long into the night judging cases.⁸⁰ Tiberius prided himself on his knowledge and respect for Roman law.⁸¹ *Iustitia* was for the *princeps* a cardinal Roman virtue and those who sought to do him honour called him *iustissimus princeps*. The *princeps* liked to think of himself as *senator et iudex*.⁸²

Honoré⁸³ writes that the emperor's primary legal role was judicial, as opposed to political and administrative. But his wider role in legal affairs needs to be considered. It was a consequence of the enlarged and flexible nature of imperial jurisdiction that the emperor's field of interest in law was open-ended. His jurisdiction was unlimited. However, the nature of this jurisdiction was characterised by conscious and limited usurpation, something which in itself undermined the legal process. There was no statute which empowered Augustus to act as a court in his own right. Among the powers voted to him in 30 BC, were an extended tribunician *auxilium*, the right to judge on appeal,⁸⁴ as well as the 'vote of Minerva'⁸⁵ in the *iudicia publica*. The second and third of these powers are prerogatives of mercy in the field of criminal justice.

⁷⁸ From Suet. *Cl.* 15.1-4, the most concentrated collection of examples of imperial jurisdiction by an emperor infatuated with the law, the whole range of social strata of litigants may be inferred. Claudius may have been exceptional.

⁷⁹ See Millar (1975), 529

⁸⁰ Suet. *Aug.* 33.1.

⁸¹ Levick (1976), 180.

⁸² See Vell. Pat. 2.129.2: 'cum quanta gravitate ut senator et iudex, non ut princeps, causam Drusi Libonis audivit!'

⁸³ Honoré, 2.

⁸⁴ Dio 51.19.7. Scott-Kilvert, 270 comments that the "'vote of Athena" may be taken as a casting vote or as an overruling (cassatory) vote. Both interpretations are difficult, the former because such a vote could very seldom be used, the latter because it would give immense powers and undermine the importance of the courts.' See also Reinhold (1988), 230, who notes interestingly that contemporary sources such as the *Res Gestae* are silent on this power of Augustus, and that we have no record of his use of a "vote of Athena."

⁸⁵ Dio 51.19.7 The "vote of Minerva" was the power of pardon in all courts and meant that verdicts in the *iudicia publica* were not absolutely final.

Although the emperor interfered in a case whenever he saw fit to do so, his very presence in court must have prejudiced legal proceedings. For example, Augustus felt compromised in Nonius Asprenas' murder trial.⁸⁶ Although he did not testify on Nonius' behalf, he made sure he was allowed, by senatorial consent, to remain in court during the proceedings. After Augustus had shrewdly explained his dilemma to the senate (if I testify, I protect a criminal; if I don't, I prejudice a friend's chance at acquittal), no court, under these circumstances would have returned a guilty verdict. Suetonius concedes that Augustus did appear on behalf of his dependants, but stresses that he intervened successfully only in one case, by personal appeal to the plaintiff, because of the role the defendant had played in the disclosure of Murena's conspiracy.⁸⁷ But Dio records a case,⁸⁸ in 12 BC, when Augustus entered a court room in an adultery case and sat in the *praetor's* chair. He did nothing to disrupt the proceedings, but forbade the accuser to insult either his friends or relatives and then stood up and left. Tiberius, on the other hand, made a regular practice of sitting in the law courts. Tacitus mentions clearly the influence Tiberius had on legal proceedings.

Nec patrum cognitionibus satius iudiciis adsidebat in cornu tribunalis, ne praetorem curuli depelleret; multaque eo coram adversus ambitum et potentium preces constituta. Sed dum veritati consulitur, libertas corrumpebatur.⁸⁹

Tacitus' attitude is clear. The historian's concession to *veritas* is reluctant, since he considers the violation of *libertas* of greater importance. He depicts Tiberius as a man unhealthily obsessed with legal affairs. Suetonius also mentions Tiberius' tendency to sit beside magistrates,⁹⁰ but only in an advisory capacity, and when abuses had to be checked. The emperor had the power to determine the nature, course and result of proceedings in the court. In one case in which the privileges of Demeter's priests were questioned, Augustus cleared the court, dismissed his legal advisers and settled the dispute *in camera*.⁹¹ The

⁸⁶ Suet. *Aug.* 56.3.

⁸⁷ Suet. *Aug.* 56.4-5.

⁸⁸ Dio 54.30.4.

⁸⁹ Tac. *Ann.* 1.75.1.

⁹⁰ Suet. *Tib.* 33.1: 'ac primo eatenus interveniebat, ne quid perperam fieret. Itaque et constitutiones senatus quasdam rescidit et magistratibus pro tribunali cognoscentibus plerumque se offerebat consiliarium assidebatque iuxtim vel exadversum in parte primori.'

⁹¹ Suet. *Aug.* 93: 'cum postea Romae pro tribunali de privilegio sacerdotum Atticae Cereris cognosceret...' Note the use of *cognosco*.

emperor conducted pre-trial criminal investigations too. Tiberius himself investigated the murder of Plautius Silvanus' wife Apronia, and afterwards referred the case to the senate for trial. When a dagger was sent to Silvanus by his grandmother, Livia's friend Urgulania, he assumed that this was a hint from the emperor and committed suicide.⁹²

Moreover, the delegation of appeals to the urban prefect or men of consular rank chosen province by province according to the source of appeal,⁹³ can also be considered usurpation. Honoré⁹⁴ views it as necessary because there was no other way of securing a modicum of uniformity in law and administration. It must be remembered, however, that in each case where the emperor sat as judge, an alternative court existed and that for a case to arrive at the emperor's court a positive choice was required, normally on the part of the accuser - as it did in an appeal on the part of a defendant. It also required a willingness by the emperor to hear the case, since he could refuse or delegate, should he so wish.⁹⁵ The emperor's role therefore was passive since it was on the initiative of others such as a governor or plaintiff/defendant that cases came to him, but he was under no obligation to try every case sent to him. It is therefore natural that the emperor should choose cases which affected his political and personal position. The emperor's primary jurisdiction in *maiestas* cases reflects his right to protect himself and his rule.⁹⁶ Tiberius' example of refusing to try any *maiestas* case in person was not followed by later emperors. Indeed, Tiberius' policy was opposite even to Augustus' practice who himself considered charges against plebeians,⁹⁷ and perhaps even higher placed persons.⁹⁸ Furthermore, it seems that the majority of cases referred to the emperor by governors in the first century were serious political charges; such as rebellion, subversion, or offences against the emperor.⁹⁹

The increasing control of jurisdiction had a disquieting, natural consequence. The extended

⁹² Tac. *Ann.* 4.22.2.

⁹³ Suet. *Aug.* 33.3

⁹⁴ Honoré, 2.

⁹⁵ See Millar (1975), 523.

⁹⁶ Garnsey (1970), 74.

⁹⁷ Suet. *Aug.* 51.1.

⁹⁸ Dio 55.10.14ff.; 55.4.3.

⁹⁹ Millar (1966), 159 and 165 discusses the cases remitted. He does not include, however, those who appealed.

use of the *cognitio* process by those who were judging, meant inevitably an erosion of the existing judicial structures. Millar¹⁰⁰ believes that the evidence, though slight, may suggest that people tended to approach those possessing exceptional power for justice without regard to the constitutional formality or legitimacy of their position. Many of those who found themselves under threat of prosecution preferred to take their chances with the emperor than to subject themselves to a *quaestio perpetua*. After all, the emperor was always looking for an opportunity to demonstrate his *clementia*.¹⁰¹ In this context, the eventual demise of the *quaestiones perpetuae* was assured.

Inescapable, however, is that from the very beginning of the principate, jurisdiction was a central part of the emperor's functions. Augustus and his successors seized this aspect of their imperial duties to ensure political security. The emperor frequently judged conspirators and supposed conspirators in person, interrogated them and put them to death.¹⁰² *Cognitio* allowed him to be judge, advocate and executioner. Augustus demonstrated his imperial *cognitio* as early as 6 BC¹⁰³ when two ambassadors from Cnidus brought to him a charge of murder against a man (who subsequently died during the investigation) and his wife. Augustus conducted his own enquiry, acquitting the woman and castigating the city and its magistrates for persecution of the accused.

Above all, the *cognitio* procedure employed by the emperor represented a fundamental break with republican forms. In the Republic there had been no office holder in the city who himself heard any criminal and civil case throughout and himself delivered a judgement. The emperor did precisely this. He had acquired for himself the power to inflict death, confiscation and exile. This was from the beginning an integral part of his role. To Millar, it was an inheritance of the summary hearings, punishments and confiscations of the civil war period.¹⁰⁴ It is the ability of the emperor, through this procedure, to inflict punishment by his personal decision which is, for Millar, the most

¹⁰⁰ Millar (1975), 520.

¹⁰¹ See p67ff.

¹⁰² See Strabo 14.5.4.(670); Dio 54.15.4; Sen. *Clem.* 1.9.

¹⁰³ *FIRA*(2) iii. no 185, 582ff.

¹⁰⁴ Millar (1975), 527.

concrete and specific of all the features of monarchy which were established from the beginning. Although Augustus sat with his *consilium* (the role of which was essentially advisory), he was by no means bound by their verdict. The ultimate decision lay with him.

But the principal significance of the imperial jurisdiction lies not in the judicial removal of political enemies, nor of rich men for their wealth, but in its 'routine nature and often insignificant subject matter, the very unimportance of which reflects the subjects' conception of the emperor as a source of law and justice.'¹⁰⁵ The emperor appreciated the role of the judicial process as a mechanism for the maintenance of political and social control in general, and as a means of the containment of violence in particular. Whether they be cases referred to him by governors from far flung provinces, or relatively minor cases of murder, or cases in which his own security was threatened, Augustus and Tiberius seemed to monitor legislative activity closely. If the emperor himself did not hear the case (according to the *cognitio* procedure), then delegated jurisdiction in the hands of those who owed allegiance primarily to the emperor, would handle it.

THE COURT OF THE URBAN PREFECT

The concept of delegated jurisdiction is important for two reasons:¹⁰⁶ firstly because it was exercised by new tribunals using the *cognitio* procedure. Consequently, the gradual replacement of Republican jurisdictions and procedures was made inevitable. Secondly, inasmuch as it was exercised by older jurisdictions by imperial sanction, their independence and separation from the power of the state was reduced.

The post of the *praefectus urbi* is one of the new tribunals which operated under strict imperial control, and eventually replaced those legal structures which were in use during the Republic. Tacitus says that the creation of jurisdiction of the *praefectus urbi* was an innovation of Augustus necessitated 'ob magnitudinem populi' and 'ob tarda legum auxilia'.¹⁰⁷ The duties of the *praefectus urbi* were to discipline slaves and those who

¹⁰⁵ Millar (1975), 240.

¹⁰⁶ Garnsey (1970), 90.

¹⁰⁷ Tac. *Ann.* 6.11.1-3: 'namque antea, profectis domo regibus ac mox magistratibus, ne urbs sine imperio foret, in tempus deligebatur qui ius redderet ac subitis mederetur; ...ceterum Augustus bellis civilibus Cilnium Maecenatem equestris

needed threats of force to keep them in order. Dio, putting words in the mouth of Maecenas, is more explicit. The role of the *praefectus urbi* would be to govern the city not only in the consuls' absence, but to be in charge of its affairs at all times. He must also deal with cases which are referred to him by other magistrates whether as a matter of appeal or review and in addition, those which involve the death penalty. His jurisdiction should cover not only those who live in the city, but also those who live outside it up to a radius of a hundred miles.¹⁰⁸

The court of the *praefectus urbi*, as delegated jurisdiction, must be considered in comparison with the senatorial court which was under the Emperor's direct and remote control, and which saw its major activity in Tiberius' reign where it was nothing more than the High Court of the Empire. During this time, when the prestige of the senatorial court was at its highest, the urban prefect handled mostly petty offences hardly more serious than the theft of a patron's clothes by his freedman.¹⁰⁹ However, by Ulpian's time the senatorial court had slipped into decline and had no ambition other than to protect the interests of its own membership while the *praefectus urbi* had become the highest judge below the emperor and would hear cases on appeal or referral. His jurisdiction had become so vast to the extent that he had emerged as the emperor's deputy in judicial affairs.¹¹⁰

The creation of the *praefectus urbi*, has two aspects. One relates to maintaining law and

ordinis cunctis apud Romam atque Italiam praeposuit: mox rerum potitus ob magnitudinem populi ac tarda legum auxilia sumpsit e consularibus qui coereret servitia et quod civium audacia turbidum, nisi vim metuat. primusque Messala Corvinus eam potestatem et paucos intra dies finem accepit, quasi nescius exercendi; tum Taurus Statilius, quamquam provecta aetate, egregie toleravit; dein Piso viginti per annos pariter probatus.'

108 Dio 52.21.1-2. The jurisdiction as given here, according to Reinhold (1988), 191, is reflected in general developments in his own time. For Millar (1964), 114-115, Dio is proposing a reform - that the prefect should hear appeals in capital cases from magistrates and governors of provinces, which is an innovation which would diminish the jurisdiction of the praetorian prefect.

109 See Jos. A.J. 18.69. Piso was the prefect (AD 26-32). The patron was Herod Agrippa.

110 See Dig. 1.12.1.praef: 'omnia omnino crimina praefectura urbis sibi vindicavit, nec tantum ea, quae intra urbem admittuntur, verum ea quoque, quae extra urbem intra Italiam, epistula divi Severi ad Fabium Cilonem praefectum urbi missa declaratur.' See also Dig. 1.12.1.4: 'quidquid igitur intra urbem admittitur, ad praefectum urbi videtur pertinere.'

order in a crowded city.¹¹¹ Augustus' intent was to provide on-the-spot protection for Romans against a huge, volatile and self-serving populace. He was therefore appointed as an "urban chief of police"¹¹² but it is possible that Augustus foresaw that the prefect would build up a criminal jurisdiction under imperial supervision which would eventually displace that of the *quaestiones perpetuae*. The other aspect, as hinted at by Dio and the *Digest*, concerns his activities in the sphere of judicial affairs. Tacitus states that the post was also created '(ob) tarda legum auxilia', which may well imply criticism of existing civil and criminal procedures. Augustus may have disapproved also of other aspects of praetorian justice, including its tendency to corruption and the limitations of the legal procedures.¹¹³

The immediate problem in discussing the the judicial role of the *praefectus urbi*, predictably, is paucity of evidence, especially within the reigns of Augustus and Tiberius. What is certain, however, is that the appointment of L. Calpurnius Piso as *praefectus urbi* in AD 12, marks the conversion of the post into a permanent long-term judicial and administrative appointment of a nature unprecedented under the Republic. The constitutional aspect of the post is consequently of some importance and discussion will yield a better understanding of how the *praefectus urbi* became better equipped to deal with violence than any of the mechanisms of the Republic.

The source and the nature of the powers of the *praefectus urbi* are problematic. Jones says that the 'city prefect presumably derived his *imperium* from the emperor.'¹¹⁴ But this is hardly adequate. Vitucci¹¹⁵ attempted to show that the office evolved step by step from Caesarian and triumviral precedents. He suggests that the posts conferred on L. Caesar in 47 BC, Plancus and colleagues in 46, Regulus in 42, Maecenas in 36 and 31, Agrippa in 31 and 19, Corvinus in 25, and on Statilius Taurus in 16, were successive stages leading towards the permanent institution beginning with Piso in AD 12. Cadoux¹¹⁶ refutes this by

¹¹¹ Tac. *Ann.* 6.11.2: 'ob magnitudinem populi.'

¹¹² The role of the *Praefectus urbi* as "chief of police" will be discussed in chapter 5.

¹¹³ Garnsey (1970), 92. n.2. Cf. Kelly, 94-5.

¹¹⁴ Jones (1972), 93.

¹¹⁵ Vitucci, (1956).

¹¹⁶ Cadoux, 152-160.

arguing that this list falls into two distinct groups. Firstly, there are those for whom the title of *praefectus* was claimed and whose sphere of action was limited to Rome. They, according to Cadoux, were substitutes for junior rather than senior magistrates. They in no way foreshadowed the new prefecture, and they resembled neither the old *praefecti* nor those of the Principate and may be regarded as unique. Only Corvinus can be considered a prototype of the new prefects.¹¹⁷ Secondly, there are those who are unofficial but influential representatives of Octavian/Augustus who managed affairs in Rome while the *princeps* was absent abroad. They are not called *praefecti urbi* by any reliable authority, and they were not chosen because of their standing in the Senate, but as Octavian's right-hand men. They did not operate alongside or in place of normal holders of *imperium*, but outside the constitution altogether possessing no legal *potestas*. They were far more powerful than any prefect because of the certainty of the support of Octavian.

Cadoux¹¹⁸ traces the development of the prefecture in four stages. Firstly, Caesar revived the old prefecture in 47 BC. Thereafter he appointed a college of subordinates who received the same title. Thirdly, Octavian occasionally had cause to appoint unofficial vice-regents, not called *praefecti*, to look after Rome and Italy in his absence. Fourthly, in about 25 BC a post called the *praefectura urbis* was created, but it owed little to Republican or Caesarian precedents or to Octavian's practice of appointing unofficial vice-regents, and was an experiment at the time which failed. It was only later that Augustus revived the post and made it permanent.

What also raises difficulties is the means of appointment of the *praefectus urbi*, and the relationship he had with the *princeps*. Did he derive their legal authority from the *princeps*? What was his constitutional status? As far as appointment is concerned, the evidence is extremely scarce. We are, in fact, nowhere told explicitly that the *praefectus urbi* derived his legal authority from the *princeps*. Nor are we clearly informed of the specific mode of appointment. Tacitus' use of the word *sumpsit*¹¹⁹ implies that the

¹¹⁷ Cadoux, 153.

¹¹⁸ Cadoux, 154.

¹¹⁹ Tac. *Ann* 6.11.2-3.

princeps did indeed exercise a controlling choice. But this does not mean that the *princeps* enjoyed sole right of appointment. The prefects were clearly magistrates¹²⁰ and enjoyed magisterial status. They were not representatives of the *princeps*¹²¹ since his presence in the city did not require their resignation. Nor, however, were they representatives of the consuls. The duration of their office which extended over several consulships, and the consuls' constant presence in the city, is sufficient evidence against this.

Independence from the *princeps* was only nominal, and one can only guess at the mode of appointment. Unlike the old *praefecti*, not being representatives of other magistrates, Cadoux makes the conjecture that 'they should derive their authority directly from the People, and it is possible that *comitia* (preceded, after AD 14, by selection in the Senate) were held for this purpose whenever a vacancy occurred. The elections would be presided over by the consuls, but the *princeps* would have a hand in the preparation of the lists of candidates and his support for any one of them would be decisive.'¹²² Although the *praefecti urbi* were legally independent magistrates, they were also from the beginning instruments of the *princeps*' will. Cadoux¹²³ sees no contradiction in this. To him the *princeps* worked through instruments of two kinds. On the one hand, there were his legal subordinates such as the senatorial *legati* and the equestrian prefects and procurators. On the other there was the whole range of officials who took their authority from the Senate and the People. The first group the *princeps* controlled through his *potestas*, the second, through his *auctoritas*.

The post of the *praefectus urbi* was a unique and original creation of Augustus of about AD 12. The mechanisms that had been in use during the Republic were clearly inadequate for the purpose of Augustus' political ends as well as ineffective in the context of a growing and turbulent city. For Kunkel the *praefectus urbi* simply replaced the *tresviri capitales* as organs of police justice.¹²⁴ But this is unconvincing.¹²⁵ Rather, the differences

¹²⁰ Dig. 1.2.2.33. See also Robinson, 187-8.

¹²¹ *Contra* Vitucci, 84. Cf. Cadoux, 159.

¹²² Cadoux, 155.

¹²³ Cadoux, 160.

¹²⁴ Kunkel, 66.

¹²⁵ Brunt (1964), 445.

between the *tresviri capitales* and the *praefecti urbi* explain the reasons for Augustus' inauguration of the post and indicate that the *praefectus* was a considerable improvement on the Republican system. Although the *tresviri* had police duties, supervised prisons and executions and could receive information on crimes,¹²⁵ they did not enjoy the far reaching criminal jurisdiction of the *praefectus urbi*. They were neither equipped to deal with large-scale public disorder, nor did they have the necessary *imperium* to try citizens. The *tresviri* were young magistrates of inferior rank who seemed to act on their own initiative within a narrow sphere of jurisdiction and their one year term meant that they had little time to gather experience. The *praefecti*, on the other hand, were often qualified legal men of senatorial rank, also equipped with invaluable administrative experience, who had a broad sphere of jurisdiction. The extended duration of office of the *praefectus urbi* had the beneficial effect of making possible a certain stability in the administration of justice.

The procedure before the *praefecti urbi* was also in many ways superior to the *quaestiones perpetuae*. It was quicker, cheaper and did not suffer from the delays to which the *quaestiones perpetuae* were vulnerable. Furthermore, the *praefectus* was usually more experienced in legal matters than the *praetores* who presided over the *quaestiones perpetuae*. Also, unlike the *quaestiones perpetuae*, the court of the *praefectus urbi* was not a special court whose jurisdiction was confined to certain offences defined by statute; in fact judgement could be passed on every offence against public order and security. The *cognitio* procedure allowed the *praefectus urbi* even to punish offences for which no ordinary prosecution was provided by law. He was also freer than the magistrates presiding over the *quaestiones perpetuae* in respect of punishment to be handed down.

The creation of the court of the *praefectus urbi* signified a radical departure in the administration of criminal justice during the reigns of Augustus and Tiberius. It had the dual advantage of being able to dispense to low-status defendants a higher quality of justice

¹²⁵ See Cic. *Leg.* 3.3.6. Here Cicero stresses the auxiliary function and the partial authority of the *tresviri*. Originally their functions were solely auxiliary, perhaps to the *praetor urbanus*.

than they were used to in the Republic, as well as creating for the *princeps* a structure which ensured greater social control thereby limiting and controlling violence. The creation of this court was not resisted or opposed. Although he held the politically sensitive post of the *princeps*' right hand man in judicial affairs, by the time of Juvenal he could be described as 'optimus atque interpres legum sanctissimus'.¹²⁶

CONCLUSION

In this chapter I have discussed the far reaching innovations made to the criminal justice system during the reigns of Augustus and Tiberius. The changes in structure and procedure came partly as a response to the legacy which the Republic had left - the Republican structures were flawed and inadequate - and partly in the context of a greater need felt by the *princeps* for firmer control over his subjects. The three courts which have been discussed have in common the merger of administrative and judicial duties, and in the case of the senatorial and imperial courts, of legislative duties as well. Another point in common was that they were specific creations of the *princeps*, and as such were under his strict supervision.

The *cognitio* procedure was common to all three courts and allowed for greater intrusion by the presiding officer. The advantages of these courts were that, to some extent, corruption was ended, and that the resolution of cases was substantially speeded up. Disadvantages were that such a fluid system of court procedure, together with social and political considerations, often meant that justice was severely compromised. Also, especially in the case of the senatorial court, courts became an arena for the satisfaction of personal political battles.

The result is that such a criminal justice system was susceptible to political exploitation and abuse, thus engendering a climate of "violence" and an atmosphere of fear. At the very least, these were structures *par excellence* for the combatting of violence in a political society far different from the Republic. Nevertheless, the flexibility which these courts

¹²⁶ *Sat.* 4.78 ff. Juvenal is here contemplating the *praefectus* in the context of criminal justice.

provided meant that the authorities could now combat violence with greater effectiveness. They were no longer restricted by the obstacles which were characteristic of the Republic.

CHAPTER FOUR

PUNISHMENT AND VIOLENCE IN THE EARLY PRINCIPATE

INTRODUCTION

This chapter concerns the third aspect of the legal process - punishment, the medium through which state power and state violence can be expressed and advertised legitimately. Investigation into Roman punishment will illustrate how an increasingly absolutist state related to individuals and its subjects. David Garland explains the broader advantages of placing punishment under the microscope:¹ 'In common with other social institutions, punishment displays a complexity of function and a richness of meaning sufficient to challenge sociological understanding and to repay social analysis. Studied with sufficient care and attention, it is a form of life which can yield a surprisingly rich crop of insights and illuminations about the society in which it takes place and about the people whom it involves.' Punishment tells us 'how we react to disorderly persons and threats to the social order - (but) also, and more importantly, it can reveal some of the ways in which personal and social order come to be constructed in the first place.'² For Garland, penology expresses a 'definite sense of how social relations are (and should be) constituted in a particular society. It points to society's sources of power and to sources of danger, to the principles which hold it together, and those which threaten to pull it apart.'³ Furthermore, one of the essential reasons for discussing penalty in the context of violence, is that punishment embodies a fundamental social and moral contradiction which is, as Garland points out,⁴ an irresolvable tension. However well organized, however humanely administered, punishment can never escape an unwanted irony, such as attempting to uphold freedom by depriving it, or condemning private violence by using a violence which is publicly authorized.

Particular discussion of punishment is justified when viewed against the notion that Rome experienced a trend towards severity in its penal system.⁵ In this chapter I propose i) to

¹ Garland, 2.

² Garland, 22

³ Garland, 273.

⁴ Garland, 292.

⁵ See e.g. Garnsey (1968), 141-62; Crook, 271; MacMullen (1986), 147-166; Coleman, 44-73.

examine the causes of this trend in the context of the political and social events of the time, ii) to analyse the nature of the impact made by the legislative and judicial evolution on punishments, and iii) to scrutinise the procedures, rituals and technicalities of specific punishments in order to establish the extent to which they might reflect a society in transition.

At the outset one must recognize that appearances of brutality may be misleading and that diversity is testimony to a more sophisticated and flexible criminal system.⁶ I shall argue that it was the Roman system of criminal law and penalties which afforded the state - and by this I mean the *princeps* and his delegated jurisdiction - the opportunity to explore avenues of brutality and severity with a view to ensuring political control and social order. The reasons for this are found not merely in the political and social circumstances of the time. Punishment, through an intricate system of procedure, symbol and ritual reflected a dimension of the society of the Early Principate which reached beyond the social and political into the psychological sphere.

Cognitio jurisdiction was, unsurprisingly, the principal mechanism through which greater severity in punishments was realised.⁷ Where, in the Republic, the penalty was fixed by the legislation which set up the court, under the *cognitio* system the judge had the freedom to choose which penalty to prescribe. He was only prevented by the bounds of *moderatio*.⁸ The *cognitio* system allowed the three new courts of the Principate to work without interference or restriction from legislation or process. When assessing the penalty for a "private" crime (*delictum*), a judge according to strict Republican procedure, would consider two factors. Firstly, he would attempt to evaluate the loss suffered by an individual. This was often precisely calculable. In such a case the court would order the accused to restore to the complainant that which he had lost, or the monetary equivalent thereof. Secondly, the judge would consider the wrong done to society as a whole,

⁶ Crook, 271.

⁷ See chapter 3.

⁸ *Dig.* 48.19.13. 'Hodie licet ei, qui extra ordinem de crimine cognoscit, quam vult sententiam ferre, vel graviolem vel leviolem, ita tamen ut in utroque moderationem non excedat.'

something which was not only incalculable but was also vulnerable to different interpretations. How does the theft of a person's private property, or the assault of a person damage society as a whole? Moreover, during the course of the principate this began to receive greater prominence and outweigh the other factors when reaching a penalty. Individuals began to look to the state for the satisfaction of their legal grievances. The state was more than happy to do this since it was now allowed to regulate more closely the affairs between citizens.

Most of the penalties which emerged from a context in which the authorities sought to monopolise the affairs between citizens for the purposes of tighter control and which came to be applied regularly to criminals originated as irregular sanctions with no basis in criminal law. New sanctions did not only mean arbitrary and imaginative ones, such as that applied to the money lender by Galba,⁹ but also the revival of old, established and cruel punishments which had since fallen into disuse.¹⁰ On many occasions customary punishments were reworked to revise the original ritual meaning that they may have had, so as to provide them with a new dimension which, I shall argue, reflected the new political and social context.

This trend to harshness can, to some extent, be explained in political and social terms, specifically the substitution of a monarchy for aristocracy.¹¹ Punishment is the public exhibition of the monarch's power over his subjects, a proposition which will enjoy some attention in this chapter. But I will also examine punishment in sociological terms to reveal not only a further aspect to the nature of the political changes of the Early Principate, but also a greater understanding of the dynamics of Roman society.

We are not to be limited by the notion that punishment is specifically directed towards the prevention or control of crime. Punishment is a social phenomenon which has set determinants and a social significance which go beyond crime control and cannot be

⁹ See Suet. *Galba* 9.1.

¹⁰ For example Suet. *Tib.* 19.1 of military punishments.

¹¹ Garnsey (1968), 161.

reduced to a single meaning or purpose. For the purposes of this investigation I shall employ Garland's definition of punishment as 'the legal process whereby violators of the criminal law are condemned and sanctioned in accordance with specified legal categories and procedures. This process is itself complex and differentiated, being composed of the interlinked processes of law-making, conviction, sentencing and administration of penalties. It involves discursive frameworks of authority and condemnation, ritual procedures of imposing punishment, a repertoire of penal sanctions, institutions and agencies for the enforcement of sanctions and a rhetoric of symbols, figures and images by means of which the penal process is represented to its various audiences.'¹²

Before embarking on an analysis of specific punishments, a general discussion of penal aims, both ancient and modern, is pertinent, both for a clearer understanding of how punishments operate within a society generally and for more accurate conclusions in our analysis of particular modes of punishment. Coleman has lamented the lack of discussion of Roman penal aims in contemporary juristic sources, as well as the deficiency of any modern sociological study devoted to systems of punishments in the ancient world. However, it is valuable to mention the modern leading schools of thought even though no single sociological model seems to fit ancient society. But each model will shed significant light on the Roman penal system.¹³

The tradition established by the sociologist Durkheim emphasises punishment's moral and social-psychological roots in addition to its putative solidarity-producing effects. The Marxist perspective considers punishment's role in a class-based process of social and economic regulation. Revisionists such as Foucault, on the other hand, argue that that disciplinary punishments operate as power/knowledge mechanisms within wider strategies of domination and subjectification. They have constructed a model of oppressive and exploitative authoritarianism.

¹² Garland, 17.

¹³ Coleman, 44-45.

A new approach from Harding and Ireland¹⁴ is to lay stress on the significance of cultural context in establishing penal methods and purposes. They have extended penology to include means of social control outside legal processes. Thus for them, punishment is the way members of a society (or its rule-enforcing authorities) make apparent their disapproval of the violation of that society's norms. The history of punishment is not an evolution from "primitive" to "civilized", but a 'constantly adjusting balance of techniques of social control determined by the physical resources, moral basis, and belief system of any given society.'¹⁵ Garland argues for a social approach to punishment believing that the philosophies of punishment in their traditional form are based on an idealized and one-dimensional image of punishment which poses the problem of punishment as a variant of the classic liberal conundrum of how the state should relate to the individual.¹⁶ Rather the need is for a pluralistic, multidimensional interpretative approach which considers punishment as an overdetermined, multifaceted social institution. His study seeks to construct a composite picture of the phenomenon by superimposing different perspectives to suggest a fuller, more three-dimensional image than is usually perceived. The advantage of thinking of punishment as a social artefact serving a variety of purposes and premised upon an ensemble of social forces, argues Garland, is that it 'allows us to consider punishment in sociological terms without dismissing its penological purposes and effects. It avoids the absurdity of thinking about punishment as if it had nothing to do with crime, without falling into the trap of thinking of it solely in terms of crime control. We can thus accept that punishment is indeed oriented towards the control of crime - and so partly determined by that orientation - but insist that it has other determinants and other dynamics which have to be considered if punishment is to be fully understood.'¹⁷ Coleman has recognized the particular value of such a perspective when applied to a society like Rome which 'differed radically in its economy, value system, and social hierarchy from those post-Enlightenment western societies on whose penal practices modern sociologists have based their models of punishment.'¹⁸

¹⁴ Harding and Ireland, 198.

¹⁵ Coleman, 45.

¹⁶ Garland, 9.

¹⁷ Garland, 20.

¹⁸ Coleman, 45.

ROMAN PENAL AIMS

What were the aims of Roman punishment? Coleman correctly cautions that distinctions drawn between various aims can frequently be misleading because an individual penalty and its governing legislation usually serve a complex of purposes rather than a discrete aim.¹⁹ Nevertheless, these purposes need to be isolated if we are to arrive at a proper understanding of Roman punishment. It was a prominent feature of Roman social life. Like most societies the Romans believed that wrongs should be punished. In the *Annals* Tiberius, in connection with the charge of *maiestas* against Silanus, says: 'sic a maioribus institutum ut, si antissent delicta, poenae sequerentur. ne verterent sapienter reperta et semper placita. satis onerum principibus, satis etiam potentiae. minui <i>ura quotiens gliscat potestas, nec utendum imperio ubi legibus agi possit.'²⁰ That Tacitus has Tiberius express such highly uncharacteristic sentiments is clear indication that the Romans themselves believed that punishment should be left within the judicial sphere: that is regulated within a specific structure after a trial procedure which has been adjudicated by a suitably qualified person' and not in the political or administrative sphere where considerations extraneous to the case at hand might eclipse justice.

For Cicero, writing about the powers of state officials and the legislative and judicial powers of the State, the courts are the organs through which society (or the state) enforces its will. Law on its own, is not enough: 'legesque cum magis iudiciis quam verbis sancienda sint.' He immediately follows this with a statement on punishment: 'noxiae poena par esto' - the punishment shall fit the crime 'ut in suo quisque plectatur, vis capite, avaritia multa, honoris cupiditas ignominia sanciat.²¹ The *Digest* too, makes it plain that there should be a relationship between the severity of the punishment and the seriousness of the crime. The court should arrive at a sentence only after due consideration:²² 'Perspiciendum est iudicanti, ne quid aut durius aut remissius constituatur, quam causa deposcit: nec enim aut severitatis aut clementiae gloria affectanda est, sed

19 Coleman, 44.
 20 Tac. *Ann.* 3.69.3-4.
 21 Cic. *Leg.* 3.46.
 22 Dig. 48.19.11.praef.

perpenso iudicio, prout quaeque res expostulat, statuendum est.'

RETRIBUTION

The determining factor in Roman punishment was retribution; the extraction of recompense, or requital for evil that has been done. Seneca who considered *emendatio* as a possible aim of punishment acknowledged that *severitas* was the best corrective.²³ In its most primitive form this was expressed in the maxim "an eye for an eye, a tooth for a tooth" and in it was enshrined the principle of *talio*.²⁴ An arsonist, for example, would suffer the penalty of *crematio*.²⁵ Aulus Gellius, discussing the *lex talionis*, and how delicts should be compensated, relates that for some of the more serious injuries retaliation was even prescribed. He concedes that this is an unsatisfactory way of restoring the balance of social relations because it is an extremely difficult task.²⁶ The intention of the *Decemviri* in *talio*, was to diminish and abolish such violence as beating and injuring, thinking that this would be done by inducing fear of such a penalty. They aimed at exacting the same spirit and the same violence in breaking the same part of the body but not the same result.²⁷

In Rome vengeance was also a religious obligation. This explains the ritual nature of many of the punishments. Brigands were executed at the site of their crime not only for deterrent value, but principally as a method of offering consolation to relatives and friends who survived the victim - 'solacio sit cognatis et adfinitibus.'²⁸ Moreover, the punishment inflicted at the scene of the crime allows the balance of social relations to be restored. In a discourse on the penalties for theft, Gellius²⁹ traces their history from Draco to Solon to the measures of the Twelve Tables to his own time. Solon's laws decreed a penalty of

²³ *Clem.* 1.22.2: 'severitas quod maximum remedium habet..'

²⁴ *RE* IVA, 2069-77 *Talio* (Herdliczka); Daremberg and Saglio 5, 28. See also Strachan-Davidson, 36-45.

²⁵ See *Dig.* 48.19.28.12: 'plerumque vivi exuruntur'; *Dig.* 47.9.9: 'qui aedes arcumve frumentum iuxta domum positum combusserit, vinctus verberatus igni necari iubebatur, si modo sciens prudensque id commiserit.'

²⁶ *Gell. N.A.* 20.1.33-34: 'quoniam talioni par non sit talio neque rumpi membrum facile possit ad alterius rupturae, ut ais tu, "aequilibrium." Verumst, mi Favorine, talionem parissimam fieri difficillime.'

²⁷ *Gell. N.A.* 20.1.34: 'sed potius eundem animum eundemque impetum in eadem parte corporis rumpenda, non eundem quoque casum exigi voluerunt, quoniam modus voluntatis praestari posset, casus ictus non posset.'

²⁸ *Dig.* 48.19.28.15.

²⁹ *Gell. N.A.* 11.8.1-17.

twice the value of the stolen goods. The penalty in Gellius' time was four times the value for *manifestum furtum* or three times the value for *conceptum furtum* or *oblatum furtum*. There is more than principle of *restitutio in integrum* evident here. The aggrieved party is not only to be compensated to the extent of the damage he has suffered. Retribution must be the predominant aim at work here.

Gellius³⁰ also comments that the wronged person must be compensated not only economically, but also his status must be asserted and due respect paid to him. Coleman calls this a refined version of the retributive principle,³¹ which is expressed by Gellius' teacher who accepted Plato's condemnation of retribution as vicious and futile: 'ea causa animadvertendi est, cum dignitas auctoritasque eius in quem est peccatum tuenda est, ne praetermissa animadversio contemptum eius pariat et honorem levet.'

In the Early Empire, the infliction of pain as a retributive principle began to enjoy greater prominence. This is in some degree due to the greater role the state in the person of its disguised monarch, the emperor, came to play in what had hitherto been delicts suffered by individuals in the sphere of private law, and the consequent public nature of these proceedings. MacMullen believes that the political aspect to penal vengeance should not be ignored.³² Tacitus' story of the burning of the Christians is a prime example of how the emperor used criminal penalties in an administrative manner in order to extract maximum political mileage.³³

Nevertheless, since the offender caused harm and suffering, it was only right that the offender should also suffer for his offence. The worse the offence, the harsher the punishment. Maximum physical suffering had to be inflicted. Therefore, a person who suffered the *summum supplicium* - the death penalty had not merely to lose his life but do so as painfully as possible. Of the sources Juvenal stood alone in his doubt as to the effectiveness of vengeance. To him vengeance was always the delight of a weak, small and

³⁰ Gell. *N.A.* 7.14.3.

³¹ 46.

³² MacMullen (1986), 150.

³³ Tac. *Ann.* 15.44.2-5.

petty mind,³⁴ and the infliction of cruel, vindictive and immoderate punishment succeeded only in teaching people how to be cruel.³⁵ But this sentiment was an exception. The majority of authors considered vengeance not a legitimate but an essential aspect of Roman punishment.

DETERRENCE

Closely linked to retribution as an aim of punishment is deterrence. Other penal aims, such as correction and prevention of repetition of the offence, are concerned solely with the offender himself; the purpose of deterrence is to inhibit potential offenders in society at large, as well as to intimidate proven criminals from repeating their offence.

For Gellius, deterrence is one of the three principle aims of punishment: 'tertia ratio vindicandi est quae *paradeigma* a Graecis nominatur cum poenitio propter exemplum necessaria est, ut ceteri a similibus peccatis, quae prohiberi publicitus interest, metu cognitae poenae deterreantur.'³⁶ Deterrence is important for Seneca too. Society punishes wrongdoers 'aut ut eum, quem punit, emendet, aut ut poena eius ceteros meliores reddat, aut ut sublatis malis securiores ceteri vivant.'³⁷ When the purpose is deterrence, punishment is inflicted more rationally and with greater self-confidence than when it is revenge: 'difficilius est enim moderari, ubi dolori debetur ultio, quam ubi exemplo.'³⁸ The jurists too recognized deterrence as a penal aim, as when the execution of brigands at the site of their crime was intended as a public deterrent.³⁹

That deterrence is rarely acknowledged by the ancient jurists as a penal aim may be because the prominence of gallows at public places rendered this purpose obvious,⁴⁰ as Quintilian can suggest 'quotiens noxios crucifigimus celeberrimae eligiuntur viae, ubi plurimi intueri, plurimi commoveri hoc metu possint. omnis enim poena non tam ad

³⁴ Juv. 13.189-191: 'quippe minuti / semper et infirmi est animi exiguique voluptas / ultio.'

³⁵ Juv. 14.15ff.

³⁶ Gell. *N.A.* 7.14.4.

³⁷ Sen. *Clem.* 1.22.1.

³⁸ Sen. *Clem.* 1.20.1.

³⁹ *Dig.* 48.19.28.15: 'ut te conspectu deterreantur alii ab isdem facinoribus.'

⁴⁰ Coleman, 48.

< vin > dictam pertinet, quam ad exemplum.'⁴¹

Penal intimidation extends beyond the limits of the juridical. In order to quell the mutiny at Nauportus, Augustus' general, Blaesus, had mutineers flogged and thrown into prison - 'ad terrorem ceterorum.'⁴² Seneca exhorts his listeners to consider penalties such as 'the jail, the cross, the rack, the hook, and the man pierced right through so that the stake comes out his mouth.'⁴³ These images are presented to arouse dread not abhorrence.⁴⁴

There are two essential requirements for deterrence to be effective. The first is that a penalty should arouse horror and aversion, the second that there should be sufficient opportunity for the public at large to experience these emotions. Here the authority responsible for punishment needs to moderate the frequency of exposure of punishments to its public lest the efficacy of the deterrent value be compromised. It also needs to acquire control of where (and how) such exposure is to take place. Much of the public punishment of the Early Empire occurred where great public exposure could be ensured - in the circus or the amphitheatre. This is particularly true when one considers the size of the amphitheatres and the frequency of the shows. From Augustus onwards a trend towards formalisation of these structures can be discerned, from the limitation and monopolisation by the emperor of the giving of games,⁴⁵ to the increase in the numbers of fixed stone amphitheatres.⁴⁶

The scenes that took place in these arenas of punishment were indeed horrific, but MacMullen⁴⁷ rightly points out that 'in a society where gladiatorial combat was a fixture, they were not likely to be judged literally intolerable.' Indeed, as the physical formalisation

⁴¹ *Decl. Mai.* 274.13.

⁴² *Tac. Ann.* 1.21.1.

⁴³ *Ep.* 14.5.

⁴⁴ MacMullen (1986), 151.

⁴⁵ Coleman, 51. Augustan legislation made it impossible for anyone to rival the emperor in sponsoring games beyond the official quota given to the regular magistrates. Cf. Auguet, 25.

⁴⁶ L. Statilius Taurus built Rome's first stone amphitheatre in 29 BC. Suet. *Aug.* 29.5. Dio 51.23.1. On the establishment of Rome's first permanent theatres (also in the Augustan period), see chapter 6 p173 n. 97.

⁴⁷ MacMullen (1986), 151.

of the spheres of public punishment in amphitheatres meant that a physical and moral separation was created between the public and the spectacle itself, much of the deterrent effect came to be lost and the dominant reaction to these punishments was one of pleasure rather than horror and aversion.⁴⁸

EDUCATION

The violent punishments which took place in the arena were also occasions where the great Roman virtues were celebrated, which may indicate a definite educational value to the cruel punishments being displayed to the Roman public. Here the Roman public were incited to *pulchra vulnera*, *amor laudis* and *cupido victoriae*.⁴⁹ The educational element was strengthened by the fact that the participants and performers were outcasts, as Romans could be expected to emulate and surpass them.⁵⁰ Education moreover is a most effective means of social control, especially if it succeeds in making people believe in the norms and standards presented to them. Success would result eventually in reducing the need for coercive intervention.⁵¹ However, the lack of evidence makes it impossible to say whether the Romans were successful in teaching *virtus* through the violence played out in the arena, or not.⁵²

PREVENTION

Unlike deterrence, prevention is not directed at the society at large and there is no aspect of example inherent in it. Rather, it is aimed at the offender himself and attempts to make it impossible for him to repeat the offence. This can be attained in two ways. Either the offender can be permanently removed from society, as Seneca suggested⁵³ 'ut sublatis malis securiores ceteri vivant', or he can be deprived of the means to commit further offences.⁵⁴ Today imprisonment has prevention as one of its aims as well as the retributive purpose of deprivation of freedom. But this was not evident in antiquity except in the case of forced labour, *damnatio in metallum*, which combined the removal of the

⁴⁸ Coleman, 49.

⁴⁹ See Plin. *Paneg.* 33.1.

⁵⁰ Wistrand, 15.

⁵¹ Wistrand, 67.

⁵² Wistrand, 73-74.

⁵³ Sen. *Clem.* 1.22.1.

⁵⁴ An extreme example is Galba's moneylender (Suet. *Galb.* 9.1), where the retributive measure of amputating the hands is also preventive.

criminal from society with making him perform an enervating but profitable duty.⁵⁵ In the Early Empire imprisonment was not a means of prevention of punishment: use of the *carcer* as a place of sentence was always resisted.⁵⁶ Nevertheless, there was an increase in custodial penalties as the Empire progressed even though imprisonment was not (in principle) a long term penalty. *Opus publicum* is frequently referred to in the legal sources and was a development which, Millar argues,⁵⁷ represented a radical innovation in the coercive capacities of the state and in the attitude of individuals.

CORRECTION AND REHABILITATION

Although correction is mentioned by both Gellius and Seneca as a purpose of punishment, if it was ever taken into account during sentencing by the Roman authorities, it is unlikely that it influenced the average person's attitude towards the fate of criminals especially when they believed that a criminal should get what was coming to him.⁵⁸

Gellius, quoting the views of Taurus in his *Gorgias* commentary, considers correction to be when punishment is inflicted so that one who has accidentally done wrong may become more careful and scrupulous.⁵⁹ It is notable that the use of the word *fortuito* strictly limits the applicability of this principle.

Seneca proposes correction as a penal aim, but suggests the best means of achieving it is through *severitas*, as long as it is sparingly applied - '*severitas, quod maximum remedium habet, adsiduitate amittit auctoritatem.*'⁶⁰ He does entertain the possibility of redemption, but warns that this raises the problem of distinguishing between curable and hopeless characters.⁶¹ Mercy, a fundamental component of correction, he recommended, should be given only to those judged capable of redemption. The worthy rather than the needy

⁵⁵ E.g. Suet. *Tib.* 51.2.

⁵⁶ See *Dig.* 48.19.8.9: '*carcer enim ad continendos homines non ad puniendos haberi debet.*'

⁵⁷ Millar (1984), 145.

⁵⁸ Cf. Coleman, 48.

⁵⁹ Gell. *N.A.* 7.14.2: '*cum poena adhibetur castigandi atque emendandi gratia, ut is, qui fortuito deliquit, attentior fiat correctiorque.*'

⁶⁰ Sen. *Clem.* 1.22.2.

⁶¹ *Clem.* 1.2.2.

deserved kindness.⁶² Dio similarly has Maecenas advise Augustus that if 'you temper the letter of the law with leniency and humanity, you may succeed in bringing the offenders to see reason.'⁶³ Occasionally mercy could be shown to the unworthy; but only for reasons of expediency. In a later passage Livia advises Augustus that the death penalty for conspiracy was inappropriate and that other methods of correcting their behaviour should be found to prevent any future crime.⁶⁴ These, however, are the principles as expressed by historians and philosophers. It is clear that a different situation operated in reality.

HUMILIATION

Whereas physical suffering is to some extent quantifiable by the number of lashes or amount of bleeding, humiliation, which seems to be an integral part of punishment, and which entails mental and emotional suffering, is far more difficult to ascertain and quantify.

In the military context, humiliation was clearly intended in the punishments Augustus meted out to soldiers of rank who had deserted their posts: centurions were punished 'itidem ut manipulares.' Lesser transgressions were punished 'variis ignominiis' such as being made to stand all day long in front of the general headquarters, sometimes 'tunicatos discinctosque, nonnunquam cum decempedis vel etiam caespitem portantes' as though they had been private soldiers whose task it was to measure out and build the camp ramparts.⁶⁵

It is not surprising in a society as status-conscious as Rome that humiliation was an aggravating factor. Status-consciousness intensified during the course of the empire, and punishment 'became a sphere *par excellence* of the distinction between *honestiores* and *humiliores*.'⁶⁶ According to the *Digest* the marks of an *honestior* were his *dignitas*, *existimatio* and *auctoritas*,⁶⁷ which, if damaged, could mean *infamia* - the loss of particular rights and privileges, amongst which was a different scale of penalties.⁶⁸

⁶² *Ben.* 1.4.2; 4.18.

⁶³ Dio 52.34.7.

⁶⁴ Dio 55.20.5.

⁶⁵ Suet. *Aug.* 24.2.

⁶⁶ Crook, 273.

⁶⁷ *Dig.* 22.5.3.praef.

⁶⁸ See *Dig.* 48.19.9.11: 'sed enim sciendum est discrimina esse poenarum neque

Humiliores, therefore, suffered more degrading and humiliating penalties due to their lack of status. An *honestior*, for example, did not suffer the cross because it was the penalty for slaves and therefore symbolised extreme humiliation, shame and torture.⁶⁹ There were other, less violent penalties reserved for the *honestior*.⁷⁰

These status divisions which characterized the Roman penal system, and Roman society, cannot be overstressed. The *cognitio* system afforded the judge a greater scope in a criminal trial for the variation of penalty according to the social class of the defendant. The spirit of the criminal law became less humane because of the political developments, particularly the change in the nature of political authority in Rome, and the increased activity of the state in the judicial sphere. Conservative Roman social values, and the hierarchical structure of Roman society contributed to a climate of increased repression which was unfavorable to penal reform.⁷¹

One of the consequences of humiliation as a penal aim is that a distance between community and criminal is achieved thus validating the legal process and entrenching authority. In the case of crucifixion, it was not only a matter of removing all possibility of sympathy for the offender, but it also brought contempt on them.⁷² This separation between the public and the victim, and the exaltation of the former, was achieved most effectively in the arena.⁷³

Humiliation extended beyond the moment of death as the crucified victim served as food for wild animals and birds of prey.⁷⁴ Augustus' callous answer to a humble request from a supporter of Brutus for a decent burial, that it was a matter to be settled for the carrion birds, was motivated not only by revenge but also by the need to inflict humiliation.⁷⁵ It

omnes eadem poena adfici posse.'

⁶⁹ Hengel, 62.

⁷⁰ See *Dig.* 48.19.28.1: 'ceterae poenae ad existimationem, non ad capitis periculum pertinent, veluti relegatio ad tempus, vel in perpetuum, vel in insulam, vel cum in opus quis publicum datur, vel cum fustium ictu subicitur.'

⁷¹ Garnsey (1968), 161.

⁷² Hengel, 50.

⁷³ Coleman, 47.

⁷⁴ Hengel, 87.

⁷⁵ Suet. *Aug.* 13.1-2:

was felt that guilt and humiliation should not only affect the wrongdoer himself but also his posterity: for example, it was proposed, after Libo's suicide, that his statue should be excluded from his descendants' funeral-parades, that no Scribonius should ever again bear the name of Drusus, and that the day of his death should become a public holiday.⁷⁶ Similarly the noose and hooks displayed to Germanicus' son, Nero by the *carnifex*, intended humiliation as much as terror. The noose denoted strangulation and the hooks were used to drag the body for display on the Gemonian steps: a most degrading end for an aristocrat.⁷⁷ Tiberius claimed credit for saving Agrippina from disgrace by allowing her to starve herself in exile, and not having her strangled in prison and thrown on the Gemonian steps.⁷⁸

The denial of burial was the final humiliation. This is a critical aspect of Roman punishment, for it ensured the separation of criminal and community beyond the grave.⁷⁹ This does not only apply to crucifixion. The throwing of offenders from the Tarpeian Rock also established this separation between community and criminal by virtue of the victim's failure to have contact with the earth after death and meant that the soul or spirit of the deceased was condemned to a restlessness between heaven and hell.

There were other ways in which humiliation was effected, most notably the infliction of the tattoo, or, less frequently, a brand on a part of the criminal which was visible to the public.⁸⁰ It was certainly a method of identifying a lower class, most particularly criminals, slaves and prisoners of war. Suetonius records with indignation how Caligula ordered men of decent family to be branded ('stigmatum notis') and sent down the mines.⁸¹

Humiliation was to become a more important element of Roman punishment in the context

⁷⁶ Tac. *Ann.* 2.32.1-2.

⁷⁷ Suet. *Tib.* 54.2.

⁷⁸ Suet. *Tib.* 53.2; Tac. *Ann.* 6.24.3.

⁷⁹ Voisin, 427-428. See also 444.

⁸⁰ Jones, 139-155. Tattooing was considered by the ancients as a sign of degradation, and its means of application was often painful too.

⁸¹ Suet. *Cal.* 27.3.

of punishments in the amphitheatre. The public ridicule of a criminal attempted to eliminate the threat he posed or represented to the prevailing order.

PURIFICATION

Once the separation between criminal and community was established, it remained for the community to deal finally with the offender by way of his expulsion from that community. The community, free from contamination by the criminal and his world, was then able to continue with life cleansed and more whole. Purification was achieved through the ritual of punishment. The religious mentalities of ancient societies often invested the penal process with a wholly religious meaning so that punishment was understood as a necessary sacrifice to an aggrieved deity. 'In these cultures crime is associated with impurity and danger and the act of punishment involves a process of expiation as well as a process of ritual cleansing of polluting elements of society.'⁸²

It was important for the punishing authority to follow the rituals of punishment as purely as possible so as not to risk becoming contaminated itself. This can be clearly observed in the violation of virgins before suffering the ritual punishment of strangling,⁸³ not out of sadism, but rather through respect for the ancient custom according to which it was impious to strangle a virgin.⁸⁴ In this aim of purification ritual and public aspects of Roman punishment meet. The military punishment of decimation requires the ritual sacrifice of victims so as to redeem the remaining members of the community.⁸⁵ Again, punishment at the Tarpeian Rock was a ritual of separation and purification which was similar to stoning.⁸⁶ This cannot be illustrated in better fashion than by Cicero's words in his defence of Sextius Roscius, charged with the most heinous of Roman crimes, parricide: 'ita vivunt, dum possunt, ut ducere animam de caelo non queant, ita moriuntur, ut eorum ossa terra non tangant..⁸⁷

⁸² Garland, 203.

⁸³ See Suet. *Tib.* 61.5; Tac. *Ann.* 5.9.2; Dio 58.11.5-6 (Sejanus' children).

⁸⁴ Thomas, 542.

⁸⁵ Tac. *Ann.* 3.21.1; 1.44.2. when Germanicus allowed the mutineers to butcher their own ringleaders in order to free themselves from guilt. See also Lintott (1968), 42.

⁸⁶ David, 135.

⁸⁷ *Rosc.* 26.

These aims of punishment must be borne in mind when considering specific Roman punishments. They are not to be considered exclusively from each other, and they will afford us profound insights into the dynamics of particular methods of punishment, as well as the society which inflicted them.

PUNISHMENT AND CRUELTY

Inherent in the trend of Roman punishment to greater *severitas* lie dangers which, if not given due consideration, can lead to erroneous and misleading conclusions. Firstly, a catalogue of Roman cruelties might induce arguments that the Romans were entirely unique in the severity of their punishments. This is simply not so. Other periods in history have yielded equal cruelty.⁸⁸ Secondly, one must avoid the bald notion that the Romans took a sadistic pleasure in their cruelties, unlike Kiefer⁸⁹ who argues that the Romans were by nature and character brutish, immoral and cruel, incapable of naturally appreciating the higher ends of civilization. He interpreted cruelty as an expression of hatred and of the will to power, and this made Rome a vicious and violent society.

Such simplistic views must not go unchallenged. Considering the gladiatorial shows and the methods and philosophies of Roman punishment, Lintott concludes that the Roman upper class, being that section of society responsible for these phenomena, was callously indifferent to physical suffering, an attitude which was removed from naked sadism.⁹⁰ What distinguishes this attitude from others is that the Romans followed policy and not passion. Reasons could be found to justify what we would consider extremes of cruelty. The absence of good reason could render a less shocking act cruel. The passions accompanying cruelty were rejected and the results were of minimal concern. Lintott suggests that this indifference is explained by the familiarity with sudden death. This is particularly true in acts of mass brutality where it is the scale of the action and not the individual act that is striking. Punishment of the innocent, according to Lintott, seems to have been a policy of expediency founded on fear, compounded on indifference.

⁸⁸ See Garland, 139 n. 21. Deserters in Louis XIV's army were sentenced to have their noses and ears cut off, their heads shaven, their cheeks branded with two *fleurs-de-lis* and to be put in chains.

⁸⁹ Kiefer, 64-106.

⁹⁰ Lintott (1968), 35-51.

Like Lintott, Auguet too, rejects the idea that Roman savagery was a symptom of a bloodthirsty or sadistic psyche. For him sadism is not compatible with the Roman mentality. The Roman was a realist; a slave to utility in the narrowest sense. He obeyed the dictates of calculation and not a bloodthirsty instinct, and their sometimes excessive harshness which they showed towards their own people as well as to their enemies is not to be confused with cruelty.

For Hopkins, however, Rome was indeed a cruel society and brutality was built into its culture, in private life as well as its public shows. The tone was set by slavery and military discipline and proceeded to the realm of paternal powers which were extremely wide-ranging.⁹¹ The Romans did set limits to cruelty, but not where we would set them. He suggests that the circulation of stories of excessive cruelty, such as the one of Vedius Pollio⁹² are instruments of social control which helped set the boundaries to the open cruelty which could be socially condoned in the private domain. Pleasure formed no part in Roman cruelty.

The public dimension of Roman punishment is another aspect which requires scrutiny. The Roman public always participated to some extent in the punishment of society's offenders. This role was to change in the first century of the Empire. As Coleman points out,⁹³ the growing popularity of gladiatorial displays and wild beast fights, the protagonists of which were almost always condemned criminals strained the resources of the Roman Forum as a facility for public displays before an audience. The growth and formalisation by the state of the amphitheatre and its attendant goings-on afforded the opportunity of deriving the maximum moral and political benefit from the punishment of society's deviants. Nevertheless, there had always been a strong public and ritual component in the carrying out of punishment which bore a significance beyond the mere political.

⁹¹ See for example Dion. Hal. 2.26.3-5.

⁹² Sen. *Ira* 2.5.5. Dio 54.23.1-5.

⁹³ Coleman, 51.

In modern society penal measures have become professionalised and bureaucratised so that they are removed from direct public participation and involvement and have been cast in a form which de-emphasises their moral content.⁹⁴ What had once been an open ritualised dialogue between offender and community is now a much more oblique communication performed in institutions which give little expression to the public voice.⁹⁵ Penalties have ceased to be social in the full sense and have become increasingly technical and professional.

The public rituals of punishment in Republican Rome clearly expressed a strong moral content. Later, in the Early Principate, they began to assume a greater political dimension. Public executions in Rome, whether in the amphitheatre or in the Forum, were not only public entertainment or political theatre to keep the masses appeased and under control, but also a means of propaganda in which the might of the emperor and the consequences of defiance were unmistakeably displayed. A complex system of ritual and political dynamics were involved. In the context of the transition from Republic to monarchy, these dynamics become particularly significant, in that punishment is one of the many ceremonies in which the legitimacy of a regime is tested and established, and in which the distance between sovereign and subject is measured and the ascendancy of authority is publicly revealed. 'The public execution takes the form of a theatrical spectacle in which the sheer force of the sovereign's power is publicly displayed upon the body of the condemned. At the same time, the vital connection between the sovereign and God is reinforced, not just by the display of the sovereign's power over life and death, but also by the religious language and symbolism which tie the law of the sovereign to the will of God and the natural order of things.'⁹⁶ Consequently the execution itself was a ritual display of strength and an affirmation of power, conducted like any other great ritual with the pomp and fastidiousness of public ceremony.

Punishment of a criminal was an opportunity to constitute sovereign power and re-establish

⁹⁴ Auguet 65, calls this execution of criminals with a screen of secrecy, a 'guilt-laden shame' which did not exist at Rome.

⁹⁵ Garland, 186-7.

⁹⁶ Garland, 266.

law and moral and political order through ritual.⁹⁷ A violator of this order was a violator against the sovereign himself since the law represented and embodied the emperor's will. The source of the emperor's power was military, and in accordance with this, justice was a manifestation of armed violence, an exercise in terror intended to remind the people of the unlimited power behind the law.⁹⁸

The *princeps*, then, as the embodiment of law and order, confirmed the relationship with his subjects in public punishments. The separation between *princeps* and *plebs* was emphasised through the exhibition of state power through the violence of public punishment. Yet the roles are reciprocal: 'the spectators by their presence endorse the workings of justice and by their participation help to fulfil its aims.'⁹⁹ Hopkins explains the growing public slaughter of unarmed criminals in the arena by suggesting that the social psychology of the crowd helped relieve the individual of responsibility and that there were psychological mechanisms by which some spectators identified more readily with the victory of the aggressor than with the sufferings of the vanquished.¹⁰⁰ Public executions, for him, helped instil valour and fear in those left at home. They were rituals which helped maintain an atmosphere of violence even in peace. Bloodshed and slaughter joined military glory and conquest as central elements in Roman culture. The Early Principate is important in this regard because it was such a time of peace when real battles and military glory were rare.

SYMBOL AND RITUAL IN ROMAN PUNISHMENT

Nevertheless, it is with the acceptance of symbol and ritual ceremony that Roman punishment was achieved. The symbols of Roman authority were also the instruments of punishment - the *fascēs* - the rods and axe.¹⁰¹ The place of execution was also symbolic: in the Republic it was Rome's most popular place, the Forum Romanum - where the magistrates were accustomed to sit, where they addressed the people and where the people themselves gathered. It was the most visible public place in the city, the most appropriate

⁹⁷ Hopkins, 1-30.

⁹⁸ Garland, 140.

⁹⁹ Coleman, 72.

¹⁰⁰ Hopkins, 27.

¹⁰¹ On the symbolic meaning of the *fascēs*, see Gladigow, 305-307.

location for rituals of consent and participation.¹⁰² In the Republic, the community was organised around the arrest of the condemned and his ritual march from the place of detention to execution. This march symbolised the separation of the condemned from the community and manifested publicly the symbolic expulsion from the world of the living. It was during the course of this ritual that the community intervened, if they thought that execution was inappropriate, or made evident their consent by abstaining. In the Principate punishment in the Forum gave way to the amphitheatre where different political dynamics, above all the power of the *princeps*, dictated different rituals and different codes of participation.¹⁰³ They are exemplified by the exposure on the Gemonian Steps of the bodies of criminals executed in the *carcer*, a new development first manifested during the years of transition between Republic and Empire.¹⁰⁴ The display of bodies on the Gemonian steps¹⁰⁵ was the only moment of publicity in a procedure of execution which became more secret during the Principate at which the people could express their will. This it did by the posthumous laceration and violent mutilation of the corpse, thus showing their approval and the recognition of the legitimacy of the punishment. Sejanus' body was abused by the rabble for three days before being thrown into the Tiber.¹⁰⁶ Exposure was also the fate of Titius Sabinus.¹⁰⁷ Symbolic violence constituted participation in the real violence of the execution.¹⁰⁸ There is no evidence in the Republic for this kind of custom. Popular participation in the process as seen under the Republic was unpredictable and could be viewed as a possible political threat, so in the Empire arrests and condemnations were conducted more surreptitiously and occasionally not revealed to the public. Exposition and the cruel savaging of a corpse became the principal ritual of separation and participation. The Republican rituals of separation were displaced, and the means of displaying opposition to imperial will were channelled into other arenas more predictable and manipulable by authority.

¹⁰² David, 131

¹⁰³ David, 167.

¹⁰⁴ David, 172-3.

¹⁰⁵ See Suet. *Tib.* 53.2; 54.2 (the bodies of Nero and Drusus dragged to the Tiber); 61.4; 75.2; Tac. *Ann.* 3.14.4 (statues of Piso); 5.9.2 (Sejanus' children). See also Suet. *Tib.* 53.2; Tac. *Ann.* 6.24.3 (Agrippina).

¹⁰⁶ Dio 58.11.4-5. See also Juv. *Sat.* 10.66-7: 'Seianus ducitur unco spectandus, gaudent omnes', 85-88.

¹⁰⁷ Dio 58.1.3. Dio does not record that his body was abused, however.

¹⁰⁸ David, 174

SPECIFIC PUNISHMENTS OF THE EARLY EMPIRE.

The Early Empire saw the legalization of many punishments which, in the Republic, had never been recognised or prescribed by any statute defining particular offences and setting up jury courts for their punishment. The only penalties the Late Republic knew were death (normally by decapitation), the monetary fine and outlawry or interdiction. The new legal process, characterized by *cognitio*, allowed other penalties such as crucifixion and cremation to be drawn into the legal process and become formal penalties for specific offences. In the Republic they were penalties inflicted as a political and administrative action on offenders with no standing in Roman law.

THE MONETARY FINE, EXILE AND BANISHMENT

The fine¹⁰⁹ was a fairly common minor sanction, motivated by the principle of *restitutio in integrum* and as such it remained within the sphere of private law. They were avenged by the individual (rather than punished by the state) by a private suit, the object of which was compensation. However, the innovations of the first century AD in the judicial process caused by, and combined with, a new political scenario meant that new crimes began to make their appearance many of which had previously been treated as private delicts. Consequently financial compensation to a wronged party began to disappear in favour of penalties which demonstrated more emphatically state power and control.¹¹⁰

Exile was one of the ways this could be achieved without physical violence. In the Republic, however, there was no official penalty of exile. In the Empire, exile evolved from a self-imposed and voluntary sanction by which death penalty was avoided, to a regular sentence enforced by the state.¹¹¹ Suetonius records Caesar's frustration with exile as an unsatisfactory penalty, and his resultant course of action: 'poenas facinorum auxit; et cum locupletes eo facilius scelere se obligarent, quod integris patrimoniis exulabant, parricidas, ut Cicero scribit, bonis omnibus, reliquos dimidia parte multavit.'¹¹² An

¹⁰⁹ See Mommsen (1899), 1012-1030.

¹¹⁰ Garnsey (1968), 150.

¹¹¹ On voluntary exile see Cic. *Caec.* 100.

¹¹² *Caes.* 42.3.

Augustan jurist, Labeo, referred to exile and death as two capital penalties.¹¹³ Defendants on capital charges, who were not normally able to choose whether to flee or to wait for a verdict, were usually arrested or kept under surveillance before trial. If convicted, they were escorted out of the country, often to a specific place of banishment. Imperial rulings determined the terms of the exile which included loss of status (even citizenship) and partial confiscation of property.¹¹⁴

There were two kinds of exile: capital - for which the terms most commonly used were *interdictio aqua et igni*, *deportatio* and *exilium*; and non-capital exile, or *relegatio*. *Interdictio* was a regular administrative measure to prevent the re-entry of exiles into Roman territory on pain of death. It involved loss of citizenship and property, and usually banishment to an island. It was the regular penalty for senators convicted of *maiestas* when the death sentence was not used, as well as for *vis publica*,¹¹⁵ *repetundae* and *saevitia*.¹¹⁶

Deportatio as a technical term seems to have made no headway until the early second century.¹¹⁷ As a penalty it deprived the condemned of citizenship but not freedom. *Relegatio* on the other hand, was in the Republic a measure of coercion which might be used by a father against his wife and family, by a patron against his freedman, or by a master against his slave. It was made the legal penalty by Augustus for adultery,¹¹⁸ which marks its appearance as a penalty in the criminal court. As a sentence *relegatio* was imposed in the Principate's new criminal courts. It might involve banishment to a place (often an island) or exclusion from Rome, Italy or specific provinces.¹¹⁹ It might be temporary, or permanent,¹²⁰ but involved the loss of neither citizenship,¹²¹ nor freedom,¹²² nor the power to make a will.¹²³ A *relegatus* could receive from a will,¹²⁴

¹¹³ Dig. 37.14.10: 'Labeo existimabat capitis accusationem eam esse, cuius poena mors aut exilium esset.'

¹¹⁴ For Augustan and Tiberian exile, see Dio 56.27.2-3; 57.22.5.

¹¹⁵ Tac. Ann. 4.13.2; 4.28.1. (Vibius Serenus). For the penalty see Dig. 48.6.10.2; PS 5.26.1. See also Levick (1979), 358-379.

¹¹⁶ See Garnsey (1970), 113 n4.

¹¹⁷ Garnsey (1970), 113-115.

¹¹⁸ PS 2.26.14.

¹¹⁹ Dig. 48.22.7.praef; Dig. 48.22.7.

¹²⁰ Dig. 48.22.7.2; also 14.praef.

¹²¹ Dig. 48.22.7.3; also 14.

¹²² e.g. Dig. 50.13.5.2.

own property,¹²⁵ and have rights over his sons.¹²⁶

Nevertheless, exile remained an alternative to what was still more unpleasant - either execution or penalties of a servile nature such as *metallum* or *opus publicum*.

CONDEMNATION TO HARD LABOUR

The early evidence for forced labour¹²⁷ as a criminal sentence is thin. Under Tiberius and Gaius both *metallum* and *opus publicum* were recognized penalties,¹²⁸ yet by the second century the legal sources often referred to *opus publicum* as a regular custodial penalty.¹²⁹ *Metallum* became the most severe secondary penalty in the Empire's penal code.¹³⁰ In the Hadrianic rescript, condemnation to hard labour ranks only behind *summum supplicium* in the severity of custodial penalties.¹³¹

Metallum, next after death in severity,¹³² differed from *opus publicum* mainly in that it was a life sentence. The man condemned to *metallum* lost both citizenship and liberty.¹³³ He had no rights to inheritance or testament.¹³⁴ Beating regularly preceded the sentence.¹³⁵ He was loaded with chains¹³⁶ and probably also branded.¹³⁷ The consequences for his status were profound. His *existimatio* was extinguished altogether, reducing him almost to the status of slave and incurring *infamia*. *Opus publicum* - labour on public works and services - was a milder penalty of the same kind. It entailed the loss of *dignitas* but not *libertas*. *Existimatio* was diminished but not removed altogether. But

¹²³ PS 3.4A.9; Dig. 28.1.8.1; 34.5.5.praef; 48.20.7.5; 48.22.7.3.

¹²⁴ PS 3.4A.9.

¹²⁵ Dig. 37.1.13.

¹²⁶ Dig. 48.22.4.

¹²⁷ See Mommsen (1899), 949-955. See also Pliny *Ep.* 10.31; 10.32.

¹²⁸ Suet. *Tib.* 51.2 (a knight who was condemned to the treadmill); *Cal.* 27.3.

¹²⁹ Millar (1984), 142.

¹³⁰ Garnsey (1968), 149.

¹³¹ Dig. 48.19.28.14: 'ita et in custodiis gradum servandum esse idem princeps rescripsit, id est ut, qui in tempus damnati erant, in perpetuum damnarentur, qui in perpetuum damnati erant, in metallum damnarentur, qui in metallum damnati id admiserint, summo supplicio adficerentur.'

¹³² Dig. 48.19.28.praef: 'deinde proxima morti poena metalli coercitio.'

¹³³ Dig. 40.5.24.6; 48.19.8.4; 49.14.12.

¹³⁴ Dig. 28.3.6.5-7; 29.1.13.2; 49.14.12.

¹³⁵ Dig. 47.9.4.1; 49.14.12.

¹³⁶ Dig. 48.19.8.6.

¹³⁷ See Suet. *Cal.* 27.3

necessarily for life.¹³⁹

The subjection of citizens to beating, fettering and hard labour was a radical innovation in the state's coercive capacities and emphasises particularly the violent nature of this type of punishment. The close association between social class and either exemption from, or exposure to, beating, shackling, incarceration, prolonged and painful forms of death, and forms of labour which were either degrading or physically destructive or both, was significant. Labour was viewed as a form of bodily violence closely comparable to flogging, the cross or exposure to the beasts.¹⁴⁰

Millar further claims that there was an economic dimension to such custodial penalties, but attributes its significance as secondary. He believes that the principal motivation for its emergence as a punishment was not so much for the service of the state but for the sake of ill-treatment and hardship.

IMPRISONMENT

As a penalty imprisonment¹⁴¹ was to be avoided if possible. *Custodia* covered the holding of a defendant before trial or sentence and methods of punishment after sentence. It also stands for imprisonment as an act of *coercitio* by a magistrate.¹⁴² The judicial authorities in the Early Empire, using their *cognitio* powers, in an effort to contain the movements of low-status criminals, had contrived a set of medium-range penalties which were, in essence, forms of custody.¹⁴³ The use of preventive detention was uncontroversial and is well documented,¹⁴⁴ but the most effective form of custody, long term imprisonment, was

¹³⁹ See Garnsey (1968), 149.

¹⁴⁰ Millar (1984), 146-47.

¹⁴¹ See *Dig.* 48.19.8.9: 'carcer enim ad continendos homines non ad puniendos haberi debet.' See also Mommsen (1899), 960-963; Eisenhut, 268-282.

¹⁴² Garnsey (1970), 147.

¹⁴³ These penalties usually involved forced labour. See *Dig.* 48.19.28.14. Even exiles, usually high status criminals, were not always left alone. See Suet. *Aug.* 65.4 (Agrippa Postumus); Dio. 59.8.8 (Piso).

¹⁴⁴ See *Dig.* 48.3.5; 48.4.4; 47.10.13.2; Imprisonment before execution during the Republic: Livy 29.19.5; 22.7; 34.44.6; Cic. *Vat.* 26; Sall. *Cat.* 55; Dio 40.41.3. For the Empire: Suet. *Tib.* 61.4; Tac. *Ann.* 3.51.1 (Clutorius Priscus); 4.70.3; Dio 58.1.3 (Titius Sabinus); Dio 58.10.8 (Sejanus); Tac. *Ann.* 5.9.2; Dio 58.11.5-6 (Sejanus' children); Tac. *Ann.* 6.39.1 (Paconianus); 6.40.1 (Vibulenus Agrippa); 6.48.4 (Albucilla); Suet. *Tib.* 75.2; Dio 59.6.2 (prisoners on Tiberius' death). Imprisonment before exile: *Dig.* 28.3.6.7; 48.19.27.2; 48.22.6.1; 49.4.1.praef.

considered an abuse. Even temporary detention involved the defendant or convict in being chained and was consequently regarded as inflicting *infamia*.

That imprisonment never enjoyed official recognition as a penalty, has led Garnsey to conclude that the Romans did not appreciate fully the direction in which their legal system was moving.¹⁴⁵ Nevertheless, I shall argue that imprisonment was to become a penal measure if not in policy, certainly in practice, above all because it lent itself, by its nature, to becoming a definite punishment. The political advantages were obvious. The offender was surreptitiously removed from society, and despatched later where he could gain no sympathy from onlookers and where the legitimacy of state authority could not be compromised should the victim be politically popular. Clutorius Priscus and Sextus Paconianus were excellent examples of this: both were strangled in prison.¹⁴⁶ Nero would have met a similar fate had he not taken his own life in anticipation of it.¹⁴⁷ Indeed, leaders of an enemy were normally strangled in the *carcer* or at the foot of the Capitoline hill.¹⁴⁸ A prime example of imprisonment as punishment is Tiberius' sentence to life imprisonment of the magistrates of Pollentia for not allowing the body of a chief centurion to be removed from the Forum until his heirs had agreed to meet demands for a free gladiatorial show.¹⁴⁹ Also, Drusus, sitting as judge in Annia Rufilla's case for fraud, was begged to inflict an exemplary punishment - 'daret ultionis exemplum', and ordered her, once convicted, to be held in the state prison.¹⁵⁰

What becomes important is not the fact of imprisonment itself, but what happened inside the prison, and what it meant in practice to be incarcerated. Clearly, prison was an awful place. Sallust's description of the *Tullianum*,¹⁵¹ where Lentulus the Catilinarian

¹⁴⁵ Garnsey, (1968), 151.

¹⁴⁶ Tac. *Ann.* 4.70.3: 'in carcerem exanimatus', Dio 57.20.3 (Clutorius Priscus); Tac. *Ann.* 6.39.1: 'strangulatus in carcere' (Paconianus). Both were accused of composing slanderous and disrespectful verses.

¹⁴⁷ Suet. *Tib.* 54.2.

¹⁴⁸ See Suet. *Tib.* 20. Tiberius sent the Pannonian leader Bato to Ravenna instead of having him strangled as the triumphal tradition demanded.

¹⁴⁹ Suet. *Tib.* 37.3: 'in perpetua vincula.'

¹⁵⁰ Tac. *Ann.* 3.36.4: 'convictam attineri publica custodia iussit.'

¹⁵¹ The *Tullianum* was evidently still extant in the reign of Valentinian. See Amm. Marc. 28.1.57.

conspirator was imprisoned and executed, is vivid and horrific.¹⁵² For David the *Tullianum* was a gigantic tomb.¹⁵³ Furthermore, the prison was geographically central,¹⁵⁴ which shows its prominence in the Roman social consciousness. Vitruvius, the Augustan town planner and architect, believed that the *carcer* should be close to the Forum, Curia and other such public places.¹⁵⁵

Prison was a place of torture and death. The unfortunate who entered prison could not emerge without the authority of those who put him there, or the aid of a tribune of the *plebs*.¹⁵⁶ There is a significant difference between death in prison and public execution. Where those condemned through due process were executed publicly in ceremonies and rituals which established and confirmed the legitimacy of authority, executions which took place in prison occurred removed from public view through strangulation,¹⁵⁷ hunger¹⁵⁸ or thirst¹⁵⁹ without the spilling of blood. Voisin believes that the Roman repugnance for strangulation is the reason why it took place in prison away from the sight of the public. The twisted corpse and the flushed and grimacing face which strangulation caused held for them evil, diabolic and malevolent omens.¹⁶⁰ Moreover, the prevention of the spilling of blood meant that society (through the executioner) minimised the risk of contamination and that society remained pure and unpolluted.

Bloodless execution in prison was particularly applied to women, the price of their impurity.¹⁶¹ A vestal virgin who had violated her oath of chastity, sentenced to die buried alive, was an example of this.¹⁶² And since her's was the most serious sexual crime, her

¹⁵² Sall. *Cat.* 55.3-5: 'Est in carcere locus, quod Tullianum appellatur, ubi paululum ascenderis ad laevam, circiter duodecim pedes humi depressus. Eum muniunt undique parietes atque insuper camera lapideis fornicibus iuncta: sed incultu, tenebris, odore foeda atque terribilis eius facies est.'

¹⁵³ David, 144.

¹⁵⁴ David, 132-3.

¹⁵⁵ Vitruvius 5.2.1.

¹⁵⁶ See for example the case of Naevius Gell. *NA* 3.3.15.

¹⁵⁷ See Tac. *Ann.* 5.9.2 (Sejanus' children); 6.39.1 (Paconianus);

¹⁵⁸ Suet. *Tib.* 54.2. Drusus, imprisoned by Tiberius in a cellar, was so tortured by hunger that he tied to eat the stuffing out of his mattress.

¹⁵⁹ For examples see David, 142-3.

¹⁶⁰ Voisin 431, quoting G. Matzneff, *Le Suicide chez les Romains*, (Paris, 1977), 144-81.

¹⁶¹ Thomas, 542

¹⁶² See Livy, 22.57. They were buried alive with a lamp, a loaf and pitchers of water,

sentence combined the two methods of torture for females. Tiberius' boast that he had exercised clemency in not having Agrippina strangled and thrown on the Gemonian steps confirms strangulation in prison as a capital punishment for women.¹⁶³

Prison also was a place below ground which did not belong to the world of the living.¹⁶⁴ Those who entered it left the living human world behind them. The victim was taken away from his family and friends and he lost his place in the community which gave him his identity. This exclusion by the civic community illustrates the evolution of the public and criminal law which resulted in the reinforcement of the *princeps*' power.¹⁶⁵

Prison was thus a place where state violence was exercised in a clandestine and covert way. The public nature of the violence which characterized Roman punishment, was not evident. This carried sinister ramifications, particularly in the Early Empire.

CORPORAL PUNISHMENT

Beating and flogging¹⁶⁶ were very common general punishments for minor offences which under the Republic, had been a Roman citizen's privilege to escape. In the Empire, however, they came to be used regularly against men of low-status (whether citizens or not) as an alternative to the fine, or as a preliminary to more severe low-status punishments.

The coupling of beating with the fine was particularly appropriate. If beating was a handy punishment for any minor offence, a fine was levelled when no special penalty was laid down.¹⁶⁷ Naturally, beating was considered more severe,¹⁶⁸ because all corporal punishment was regarded as degrading. The impact of a beating on the *dignitas* of an *honestior* was great. Yet economic considerations often made a beating preferable to a man

163 milk and honey.
Suet. *Tib.* 53.2. This carried with it the insinuation of Agrippina's immorality. See also Tac. *Ann* 6.24.3.
164 David, 145.
165 David, 171.
166 See Mommsen (1899), 981-985.
167 See *Dig.* 50.16.131.1. Cf Garnsey (1970), 138.
168 *Dig.* 48.19.10.2: 'solus fustium ictus gravior est quam pecuniaris damnatio.'

of meagre means and little *dignitas*. In the Republic, when the fine was statutory, and the *cognitio* procedure was unavailable, the loser in litigation was often forced to sell his possessions, or take unfavourable credit in order to pay his fine. The Empire saw an increase in the number of beatings. In the criminal courts at least, the beating replaced the fine for the man of low status and little property.¹⁶⁹ Also with those delicts which were handled *extra ordinem* either a fine or beating could be applied.

Corporal punishment regularly preceded a more severe penalty, especially execution. This was a long established practice.¹⁷⁰ The reason for this was clearly to maximize the physical suffering which the victim has to endure. As Coleman observes, 'the death penalty should not merely deprive the offender of his life but do so as painfully as possible for the worst types of offender.'¹⁷¹ The notion of a speedy, dignified and discreet execution is a modern one.¹⁷²

Flogging to death was a measure traditionally reserved for certain crimes.¹⁷³ However, it was rare in the Empire, but not unknown. Suetonius recalls the punishment - *more maiorum* - which entailed flogging a victim to death with sticks, after he had been stripped naked and his head thrust into a wooden fork.¹⁷⁴ In AD 16 one of the magicians whom Libo had consulted was beaten to death in public outside the Esquiline gate in the traditional fashion - 'more prisco.'¹⁷⁵ In the military context it was also an ancient procedure to draw lots in a discredited legion and have every tenth man flogged to death.¹⁷⁶ Eventually, beating to death as a punishment, where it did not precede execution, became illegal.¹⁷⁷

¹⁶⁹ *Dig.* 2.1.7.3: 'in servos et eos qui inopia laborant.'; also 47.9.9; 48.1.2.

¹⁷⁰ *Dion. Hal.* 9.40.3; *Sall. Cat.* 51.21; *Dig.* 47.9.9; 48.9.9.*prae*f; *Dio* 54.7.6. See also Thomas, 541.

¹⁷¹ Coleman, 46.

¹⁷² See chapter 1, p.4-5.

¹⁷³ See *Gell. NA* 10.3.5; 17.21.24; *Livy* 22.57.3-4; *Dion. Hal.* 8.89.5 (for having sex with a Vestal); 9.40.4; *Suet. Nero* 49.2-3; *Dom.* 8.3-4 (for being lovers of the chief-Vestal).

¹⁷⁴ *Suet. Nero* 49.2; See also *Claud.* 34.1.

¹⁷⁵ *Tac. Ann.* 2.32.3. Goodyear (ad loc.), writes that this is a notable variation for *more maiorum* as specifically used for the "hallowed" punishment of attachment to the stake or gibbet or scourging to death.

¹⁷⁶ *Tac. Ann.* 3.21.1-2.

¹⁷⁷ *Dig.* 48.19.8.3.

If flogging was intended to maximise the suffering of victims before execution, it was also the form of punishment with which Romans were most familiar. Slaves and persons of low status experienced it regularly, while those who were at school could not escape the discipline of the school master. The instruments by which corporal punishment were inflicted ranged widely according to the degree of harshness. Instruments were classified according to their effect.¹⁷⁸ For the schoolboy punishment was indeed formidable.¹⁷⁹ This was inflicted most commonly by the *ferula* which corresponded roughly with the cane, and was, by comparison with the rest, the least damaging. The *narthex*, cut from the stalk of the giant fennel, was light and easy to manipulate but might have in it a few knots.¹⁸⁰ The *flagrum* or *flagellum*, was a scourge of straps generally used for punishing slaves. The *scutica* was a whip also made of several straps, reserved for the most serious offences. The *virgae* were rods formed of a bundle of pliant withies, which were quite ghastly in their effect.

The *virgae*, which were also traditionally borne by the lictors,¹⁸¹ were replaced by the *fustis*, the military staff, as the instrument of civilian beating. Beating by the *fustis* was not necessarily heavy. A *verberatio* was invariably a heavy beating;¹⁸² *castigatio*, or *admonitio* were light beatings which can also be administered by *fustes*.¹⁸³ A governor was entitled to investigate and punish extra-judicially certain minor offences by beating: 'levia crimina audire et discutere de plano proconsulem oportet et vel liberare eos, quibus obiciuntur, vel fustibus castigare vel flagellis servos verberare.'¹⁸⁴

Beating, therefore, not only formed part of other, more severe punishments, but also became a readily accepted penal measure on its own. It assumed a greater role in the

¹⁷⁸ Hor. *Sat.* 1.3.117: 'adsit regula, peccatis quae poenas irroget aequas, ne scutica dignum horribili sectere flagello. Nam ut ferula caedas meritum maiora subire verbera non vereor'.

¹⁷⁹ Bonner, 143.

¹⁸⁰ See Pliny *NH* 13.42.1-3.

¹⁸¹ On the symbolic significance of the *virgae*, see Gladigow, 307-313.

¹⁸² *Dig.* 47.10.5.*praef.* 1 (contrast between *pulsatio* and *verberatio*).

¹⁸³ *Dig.* 1.12.1.10; 1.15.3.1; 1.16.9.3; 47.10.15.30; 47.11.7; 48.2.6.

¹⁸⁴ *Dig.* 48.2.6.

Beating, therefore, not only formed part of other, more severe punishments, but also became a readily accepted penal measure on its own. It assumed a greater role in the exercising of social control by authority.

EXECUTION

The death penalty witnessed the most significant change in practice. The development was manifested on two fronts. Firstly, the application of the *cognitio* system, combined with the political and social context of the time, meant a growing number of capital offences.¹⁸⁵ Secondly, the mechanics of execution changed.

Under the Republic there is little evidence that the death penalty was actually applied to citizen members of the population, or at least, to members of the higher orders.¹⁸⁶ *Maiestas* was however, a special case. From the beginning of the Empire, death sentences were expected to follow convictions for *maiestas* whatever the offender's status. The susceptibility of *maiestas* to imaginative interpretation by a sycophantic court or an insecure *princeps*, both exploiting the *cognitio* procedure, inevitably resulted in an increase in death penalties many of which were anticipated before conviction, by the suicide of the accused. But this development only began to gain momentum during the reign of Tiberius. According to Dio, Augustus was reluctant to sentence conspirators to death, since he recognised that their execution would contribute nothing to his safety. But he also realised that to let them go might encourage others to plot against him.¹⁸⁷ Even early in his reign Tiberius did not execute *maiestas* offenders.¹⁸⁸ Dio uses the episode of the conspiracy of Gnaeus Cornelius¹⁸⁹ to discuss (through the contrivance of a dialogue between Augustus and Livia) the various methods of retaining state security and whether to sentence conspirators to death. It was Livia's opinion that the death penalty should not be inflicted for such offences, but that one should find other means of correcting behaviour so that

¹⁸⁵ Garnsey (1968), 153.

¹⁸⁶ On the Roman death penalty see Mommsen (1899), 911-48; and Levy, 325-78.

¹⁸⁷ Dio 55.14.1-2.

¹⁸⁸ Dio 57.9.2-3.

¹⁸⁹ Dio 55.14-22.1. Gnaeus Cornelius was released and even appointed consul (AD 5). However, the authenticity of this incident has been doubted. See Raaflaub and Salmons, 427-428.

conspirators will not commit any crime in the future.¹⁹⁰

Like other punishments, the death penalty was executed in accordance with rituals and ceremonies, using instruments of symbolic value. These symbols and rituals changed at the beginning of the Empire.¹⁹¹ The rituals of separation which had been organised around the arrest of the condemned and his march to death, and at which the community could express its consent or disapproval, were replaced by new rituals and ceremonies. The intense emotions which had accompanied the old rituals and ceremonies could be exploited, controlled and monitored at the games which now appealed to the civic sensibilities. The symbols became manipulated or inappropriate. As the *princeps*' power became absolute, and arrests and convictions were made in secret, the community lost an opportunity to express their opposition to the imperial will. The public execution afforded a great opportunity to confirm state power and establish social control.

Decapitation (by the sword) was originally the simple death penalty, denoted by the expression *capite puniri*.¹⁹² Simple beheading was usually denoted by *decollare*.¹⁹³ In the Republic it was performed by means of the axe - *securi percussio*.¹⁹⁴ The *securis* was the axe in the *fascēs*, the visual symbols of *imperium*, borne by the lictors who were always in attendance on consuls and praetors, a constant 'reminder to Roman contemporaries of the military basis of civic authority'.¹⁹⁵ The condemned was bound naked to a post, his hands tied behind his back, first lashed, then cast to the ground and beheaded.¹⁹⁶ During the Empire however, the axe was replaced by the *gladius*.¹⁹⁷

The *carnifex*, played a critically symbolic role in these proceedings, whether he strangled a victim in prison, pushed him off the Tarpeian rock, or beheaded him in public. He stood as

¹⁹⁰ Dio 55.20.5

¹⁹¹ David, 175.

¹⁹² *Dig.* 48.19.8.1.

¹⁹³ See for example, Suet. *Cal.* 32.1; Sen. *Apoc.* 6.2; Petr. 51.

¹⁹⁴ Sen. *Ira.* 2.5.5. See also Gladigow, 309ff.

¹⁹⁵ Finley, 65.

¹⁹⁶ Livy 2.5.8-10; 8.7.19; 26.13.15; 18.19.11-12; Cic. *Verr.* 2.5.121; Sen. *Contr.* 9.2.21.

¹⁹⁷ See *Dig.* 48.19.8.1: 'sed animadverti gladio oportet, non securi vel telo vel fusti vel laqueo vel quo alio modo.' See also Sen. *Ira* 1.17.4.

link between the living and the dead,¹⁹⁸ was rejected by the community and considered so disgraceful that he was not permitted to live in the city.¹⁹⁹ He belonged not to the world of the city, but to the world of the dead. Consequently, contact with him risked contamination.²⁰⁰ He differed from the person who handed down the sentence (in the Republic the *lictor* or *tribunus plebis*) in that he was not protected by the sacred character of his function. In performing an execution, he shared in the fate of his victims. The issue of contact with the dead was sensitive. At the gladiatorial combats to commemorate Agrippa's funeral, all who attended (except Augustus) wore black.²⁰¹ Rich believes that the reason for Augustus' not doing so was due to the belief that the emperor should not be in contact with death.²⁰² When Augustus delivered the funeral oration for Agrippa, a curtain was stretched before the corpse.²⁰³ Dio, in a rare comment on his sources, rejects the explanation that either as *pontifex maximus* or as *censor*, Augustus was prohibited from viewing a body. But Rich supplies other evidence to confirm its correctness.²⁰⁴

While *capite puniri* signified the normal death penalty by decapitation, *summum supplicium*²⁰⁵ denotes aggravated forms of death penalty including crucifixion, burning alive, and throwing victims to wild beasts. The Hadrianic constitutions place *summum supplicium* and *capite puniri* at the head of two distinct groups of penalties.²⁰⁶ Therefore they are not likely to have been identical. *Summum supplicium* however is characterized by the variations of torture which preceded different punishments whereas *capite puniri* followed lashing. The *Digest* informs us that *honestiores* escaped *summum supplicium*.²⁰⁷ This, coupled with the fact that it was the least painful and degrading form of execution, suggests that *capite puniri* was applied only to high-status victims.

¹⁹⁸ See David, 144.

¹⁹⁹ Plaut. *Pseud.* 332; Cic. *Rab. Perd.* 15.

²⁰⁰ See Plin. *Ep.* 4.11. The Vestal priestess Cornelia, who had been sentenced to be buried alive by Domitian, refused to touch him.

²⁰¹ Dio 55.8.5.

²⁰² Rich (1990), 226.

²⁰³ Dio 54.28.3-4.

²⁰⁴ Rich (1990), 207.

²⁰⁵ Daremberg and Saglio 4.2.1568-1570.

²⁰⁶ *Dig.* 48.19.28.13-14.

²⁰⁷ *Dig.* 48.19.9.11.

The most obvious example of *summum supplicium* is, of course, crucifixion. Under the Republic, this form of punishment had been employed only on slaves and deserters with any degree of regularity.²⁰⁸ The Empire saw the novelty of its application to free men of low status whether citizens or non-citizens. Garnsey correctly cautions against undue exaggeration of the rate at which this situation worsened.²⁰⁹ But he suggests that by the Severan period, what had once been irregular had now become the norm. The roots of this development are to be found in the Early Empire.

However, one must guard against finding too much significance in crucifixion in the Early Empire. It is correct to say that it was a singularly dramatic form of punishment, but Hengel's position that it satisfied the primitive lust among the Romans for revenge and sadistic cruelty and that it was a 'manifestation of trans-subjective evil - a form of execution which manifests the demonic character of human cruelty and bestiality,' is surely a product of a Judaeo-Christian perspective.²¹⁰ Crucifixion must be viewed as the chief *summum supplicium*, and the contempt, fear and repulsion Romans had for it added to its value as an effective deterrent.

Not that it was a form of punishment unique to Rome. Crucifixion had been practiced by many other contemporary civilizations, such as the Indian, Assyrian, Scythian and Taurian. Its origin is to be found in Persia.²¹¹ That it was widely used by the Romans is a clear indication of its efficacy as a punishment in terms of the penal aims discussed earlier. There were also, however, religious and political aspects to the *crux* which afforded it deeper meanings than mere deterrence, retribution, humiliation, purification or prevention.²¹² Certainly crucifixion had some practical advantages as a *summum supplicium*: it could be carried out anywhere, whereas other *summa supplicia*, such as *crematio* or *damnatio ad bestias* required a city arena and other facilities. There was

²⁰⁸ Crucifixion was the customary form of execution for slaves. See Cic. *Cluent.* 187; Val. Max. 8.4.2; Livy 22.33.2; Dio 54.3.7; Suet. *Dom.* 10.1.

²⁰⁹ Garnsey (1968), 147.

²¹⁰ Hengel, 87.

²¹¹ Hengel, 22-23.

²¹² Cf. Hengel, 46.

relatively little required in the way of equipment. Victims could be crucified on trees,²¹³ attached naked to a *furca*,²¹⁴ or be nailed or bound to a stake.²¹⁵ The slow and agonising death which accompanied crucifixion was unspectacular relative to what an arena demanded,²¹⁶ but it could be combined with *damnatio ad bestias* to produce a more spectacular form of execution.²¹⁷

While crucifixion offered to judge and executioner variations and possibilities it gave it a more horrific aspect than most: 'cruces, non unius quidem generis, sed aliter ab aliis fabricatas: capite quidem conversos in terram suspendere, alii per obscena egerunt, alii brachia patibulo explicuerunt.'²¹⁸ One constant was the customary beating before the crucifixion, which usually took place where maximum exposure to the public was achieved whether it was at a crossroads,²¹⁹ in the theatre, on high ground or along the Via Appia. The bodies were not removed after the moment of death, but were left to disintegrate in the face of the elements, or to be eaten by wild beasts or predatory birds. Consequently humiliation, shame and torture was maintained even after death. Hengel suggests that there was in this an element of religious sacrifice.²²⁰ Certainly the fact that the body was never buried was of some significance. Voisin postulates a similarity between those who have been hanged²²¹ and those who have been crucified which lies in the fact that in both cases the victim does not make contact with mother earth. As a consequence of his crime and

²¹³ - See Livy 1.26.6. See also Voisin, 438 n106 and references cited. Also Sen. *Ir.* 1.2.2.

²¹⁴ Suet. *Nero* 49.2.

²¹⁵ See Hengel, 24.

²¹⁶ Sen. *Ira.* 1.2.2: 'invenitur aliquis, qui velit inter supplicia tabescere et perire membratim et totiens per stilicidia emittere animam quam semel exhalare? Invenitur, qui velit adactus ad illud infelix lignum, iam debilis, iam pravus et in foedum scapularum ac pectoris tuber elisus, cui multae moriendi causae etiam citra crucem fuerant, trahere animam tot tormenta tracturam?'

²¹⁷ Coleman, 44-73.

²¹⁸ Sen. *Dialogue.* 6. For later variations cf. Tac. *Ann.* 15.44.4, Jos. *BJ* 5.449-51, Suet. *Galb.* 9.1. Auguet 97, adds that sometimes the condemned man was sometimes attached to the upper angles of a *patibulum*, made up of two stakes on which rested a crossbar; thus the body sagged and was pulled down by its own weight.

²¹⁹ Quint. *Decl. Mai.* 274.13.

²²⁰ Hengel, 87.

²²¹ Voisin, 422-50, especially 427 n28 mentions hanging in the context of suicide which was considered a shameful and unfashionable method of killing oneself. See Griffin (1986), 64-77; 192-202. Grisé, 94 writes that the methods of Roman suicide seem to have been socially differentiated. Hanging, drowning and jumping from heights seem to have been eschewed by the upper class.

punishment he can enter neither heaven nor hell. He belongs to the *insepulti* and his soul is condemned to roam eternally the place of his death which was often the place of his crime, and the place he had contaminated, ready to torment the living and the dead. To bury him would have been sacrilegious.²²² Yet hanging never became fashionable as a method of punishment; which perhaps explains the Roman distaste for public strangulation.

Crucifixion must be seen as an administrative and political punishment motivated by considerations of retribution and deterrence. The crucifixion of the 6000 followers of Spartacus on the road from Capua to Rome is a well-known example.²²³ So too the soldiers who collected tax from the Frisian tribes in AD 29.²²⁴ But it was also a sanction against criminals of low status; for example Caepio's slave who had betrayed him was led through the Forum carrying an inscription explaining why he was to be crucified.²²⁵ It was a punishment which was widely practiced with origins in the Republic as well as other parts of the ancient world. In the Empire it became applied to Roman citizens,²²⁶ something unheard of in Roman society and an innovation almost entirely due to a different political context legitimised by new legal and court procedures.

In the *Pauli Sententiae*, *crematio* and *damnatio ad bestias* follow the *crux* in severity as *summa supplicia*.²²⁷ In the *Digest* *crematio* stands with *furca* and *capitis amputatio* at the top of the table of penalties compiled by Callistratus.²²⁸ There is little to be said about *crematio* because its occurrence in the Republic and Early Empire is rare, but not unknown.²²⁹ The *Twelve Tables* records it as a penalty for arson, one fitting the crime.²³⁰

²²² Voisin (433), argues that funerary rites, certain customs and the Roman conception of hell itself confirm this hypothesis.

²²³ Appian. *BC* 1.120.

²²⁴ Tac. *Ann.* 4.72.3: 'rapti qui tributo aderant milites et patibulo adfixi.'

²²⁵ Dio 54.3.7.

²²⁶ The *S.C de Pisone Patre* (column 2, line 51-2) records with a tone of revulsion that Piso had 'also fixed a Roman centurion citizen to the cross.' 'neq(ue) externos tantum <m>odo sed etiam centurionem c(ivem) R(omanum) cruci fixisset.'

²²⁷ *PS* 5.17.2. *Damnatio ad bestias* often takes the place of *decollatio* (decapitation) as an aggravated penalty.

²²⁸ *Dig.* 48.19.28.praef.

²²⁹ See Cic. *Fam.* 10.32.3 where Balbus performs this atrocity against the Pompeian Fadius. Also Suet. *Cal.* 27.4 in which Caligula burned a writer alive in the middle of the arena because of a line which had a double meaning. Cf. Garnsey (1970), 241.

²³⁰ *Dig.* 47.9.9.

It appears the reason for this re-emergence is to intensify the torture and entertainment, of the *summum supplicium*. There may have been a link between *crematio* as a punishment and as a funeral rite. The crowd at Tiberius' funeral, for example, called for his corpse to be taken to the amphitheatre and given only a half burning - 'semiustilandum',²³¹ a farcical humiliation.

*Damnatio ad bestias*²³² and mortal combat²³³ were punishments which grew in prominence in the Early Empire. Garnsey writes that it was little known in the Republic.²³⁴ Yet it did seem to occur.²³⁵ By the Early Empire it had become a regular punishment. Seneca records men being thrown to lions and bears.²³⁶ Caligula did not even look at the charge sheets but fed criminals to the wild animals when he discovered butcher's meat was too expensive.²³⁷ Claudius had men thrown to the beasts for serious breaches of the law.²³⁸ Nero had Christians torn to pieces by dogs.²³⁹ The growth of the amphitheatre as a means of testing political attitudes and diverting social unrest is responsible for the corresponding increase in the instances of this punishment. The increase in the numbers of capital crimes along with the demand for new penalties and the changes in the legal process, provided the numbers of *noxii* required to satisfy the "market force" demand for punishment as public entertainment. Furthermore, the pool of persons considered *humiliores* grew, so that penalties previously reserved for slaves, became applicable to free aliens and perhaps even to low-status citizens.²⁴⁰ *Damnatio* and mortal combat were unlike other capital penalties in that they afforded the condemned an opportunity at temporary survival depending on his skill and good luck. In the end, however, they proved fatal.²⁴¹ Auguet writes that *damnatio ad bestias* was an idea which

²³¹ Suet. *Tib.* 75.

²³² For wild beast shows see Balsdon, 302-314 esp 308. See also Auguet, 96-99.

²³³ Balsdon, 288-302.

²³⁴ Garnsey (1970), 129.

²³⁵ See e.g. Livy *Per.* 51; Val. Max. 2.7.13; Cic. *Pis.* 89; *Fam.* 8.4.5; Sall. *Jug.* 14.15.

²³⁶ Sen. *Ep.* 7.4.

²³⁷ Suet. *Cal.* 27.1

²³⁸ Suet. *Claud.* 14.

²³⁹ Tac. *Ann.* 15.44.4.

²⁴⁰ Garnsey, (1968), 147.

²⁴¹ It is for this reason that Coleman regards this as an "indirect" penalty. Coleman, 46.

originated from Carthage and since it was specially reserved for foreign deserters from Roman armies, was therefore the most shameful and infamous of all punishment. It was later "developed" for *humiliores* - particularly brigands - as an aggravation of the death penalty. This "development" took the shape of tying the condemned man naked, facing the public, to a column of shame (*stipes*) on which the reason for condemnation was nailed, and then releasing the animals.²⁴² The opportunity at temporary survival was removed once and for all.

The use of the Tarpeian Rock saw substantial change in the Early Empire. It was mainly used against those condemned for parricide, a crime particularly repugnant to Romans. It was, like other punishments subject to ceremony and ritual. Suetonius mentions the case of a person who appeared before Augustus on a charge of parricide. Had he been convicted, he would have been thrown into the Tiber, or the sea, or a nearby river, sewn up in a sack along with a monkey, a dog, a cock and a snake.²⁴³ This, Suetonius tells us, was to typify the four different vices which led him to his crime.²⁴⁴ Again, this follows a flogging. The Rock itself was a focal point at the heart of the city.²⁴⁵ In this punishment too was the ritual of collective purification and separation from the community. Here also the notion of absence of contact with the earth to ensure that the condemned's soul remains homeless, is evident.²⁴⁶ Yet, in this punishment too, there were important and profound mutations: In the Republic the punishment was performed by the tribune alone, but under the Empire, an executioner assumed the role.²⁴⁷

So repulsive was parricide²⁴⁸ to Roman society, that the aim of the Tarpeian Rock was to rid society from the risk of contamination completely. It was the only type of homicide which did not belong to the sphere of private law in the Republic. In the Empire, the

²⁴² Auguet, 97-100.

²⁴³ *Dig.* 48.9.9.*praef.*

²⁴⁴ Suet. *Aug.* 33.1.

²⁴⁵ David, 133-134.

²⁴⁶ *Inst.* 4.18.6. The condemned is sewn up in a sack 'ut omni elementorum usu vivus carere incipiat et ei caelum superstiti, terra mortuo auferatur.'

²⁴⁷ David, 167. *Twelve Tables.* 8.13; Liv. 24.20.6; 25.7.13; Sen. *Contr.* 1.3.1.

²⁴⁸ On the subject of parricide, see Briquel, 87-107.

CHAPTER FIVE

THE PHYSICAL CONTAINMENT OF VIOLENCE - THE FORCES OF LAW AND ORDER

INTRODUCTION.

For someone establishing a "new order," as Augustus did, the maintenance of law and order is essential.¹ To secure political stability, as well as his own position in politics it was imperative for Augustus that not only political violence, of the type which is apparent in the late Republic, be managed and preferably eliminated altogether, but also that the violence potential in a highly populated and socially pressurized city, be controlled. Rome, after all, was the centre of politics. If Augustus could solve the problems evident in the city, then wider political problems could be addressed with more efficacy. The last years of the Republic, especially the 50s BC, witnessed mob violence of a kind uncontrollable without the highly irregular measure of bringing troops into the city.² Indeed the decision to authorize the employment of troops in the city marked the breakdown of the Republican system which had always excluded the deployment of troops; that the aristocracy was no longer able to cope with genuine mass protest without sacrificing the fundamental principles of Republican government, is significant.³ Augustus was sensitive to this problem. Suetonius tells us that the *princeps* took great pains to avoid the appearance of a military occupation of Rome, and never kept more than three cohorts on duty in the city at one time which were not permanently billeted in a camp.⁴ Thus in the popular mind Augustus (then Octavian) would be distanced from the recent dictators from whose logical successor he might reasonably have seemed to be.⁵

Moreover, the growth of population in the city as a result of the Civil War, amongst other factors, and the pressures it created caused problems of law and order of a different kind. Juvenal, for example, although writing in the 1st century AD, complains of a city plagued by *latrones*, where it is unsafe to venture out at night, vulnerable to frequent outbreaks of fire.⁶ The existing structures for the physical maintenance of law and order, and indeed for

1 Echols, 377.
 2 Gruen, 447-448.
 3 Nippel (1984), 29.
 4 Suet. *Aug.* 49.1.
 5 Echols, 379.
 6 *Sat.* 3.197-207; 10.19-22.

the well-being of the city as he perceived it, were becoming inadequate. Furthermore, the inability of Agrippa, the *princeps*' unofficial representative in 21 BC, and Saturninus, the sole consul in 19 BC, to control serious riots occasioned by election disputes while he was away, led Augustus 'to recognize the necessity of providing the city with a permanent force of reserve police.'⁷ For Augustus therefore, there was a social and political necessity to attend to this problem.

The Augustan age witnesses the introduction of three new forces which had a significant impact: the Praetorian guard, the *cohortes urbanae* and the *vigiles*. These military or quasi-military bodies had several distinct functions: the protection of the emperor and his family, the maintenance of order in the capital, and the prevention and suppression of fires. These forces reflected a social and political picture which was quite different from that which prevailed in the Republic. It is the aim of this chapter to examine the circumstances surrounding their creation and their role in limiting and containing the violence of the time and to contrast them with the forces available to the authorities in the Republic for the purpose of maintaining law and order.

I shall use as guidelines the two questions which Robinson has posed.⁸ Firstly, what were the forces at the disposal of the authorities for the maintenance of law and order and what were the resources available to those forces? These questions, Robinson believes, require separate treatment for the Republic and Principate, on the grounds that there was a different approach on the part of government to the problem of violence during the Principate. Secondly, what kind of behaviour, even when not specifically criminal, was regularly regarded as needing control? In this respect a distinction must be drawn between between large scale civil strife⁹ (which, in the Republic, would have been beyond the powers of repression of the magistrate concerned - that is, the *aedile*)¹⁰ and the small scale, minor violence in which the *aediles* would have been the appropriate magistrates to quell, but did not have adequate executive powers or sufficient men at their disposal.

⁷ Echols, 380.

⁸ Robinson, 174.

⁹ This will be dealt with in the next chapter.

¹⁰ See Lintott (1968), 174.

However, there is the danger of concluding erroneously that military might in the city was the principal means of retaining political power. While it is true that the new forces in the city helped Augustus greatly in maintaining control, they were neither the sole guarantors of the *princeps*' power nor were they solely responsible for the maintenance of order. Rather, social and political stability and consensus, and respect for legitimate authority, were the main factors which ensured the maintenance of law and order in the city of Rome both during the Republic and during the Principate.¹¹ The legitimacy of government was therefore a significant feature in the containment of violence; and legitimacy was acquired more through appeasement of the *plebs* than through their participation in the political structures, which offered them very little benefit at all. Appeasement, especially through the supply of corn and public games, was the main way in which the *princeps* kept the urban *plebs* peaceful, despite the fact that he had available to him thousands of troops for the purpose of repressing violence.¹²

Nevertheless, I shall argue that the new forces instituted by Augustus were an essential element of his administrative and political reform programme, even though they were used much less than is often supposed.¹³ Their mere presence in the city as a military force and the threat of their use ensured that violence did not occur readily.

However, the notion of a force of law and order in ancient Rome raises serious conceptual problems which must be resolved in order to understand the role these forces played in the combatting of violence.

THE MAINTENANCE OF LAW AND ORDER IN THE LATE REPUBLIC

Although this has been discussed much in detail elsewhere,¹⁴ nevertheless it is important to discuss some aspects of the forces of law and order available in the Late Republic because they have a direct bearing on the forces which evolved during the Principate.

¹¹ Nippel (1988). Reviewed by Rich (1991), 193-5.

¹² Rich (1991), 194.

¹³ Cf. Nippel (1988), 161-9.

¹⁴ See Echols, 377-379; Lintott 1968, 89-106; Robinson, 174-180; Nippel (1984), 20-23; Nippel (1988), 108-144.

The two main office-bearers responsible for the maintenance of law and order were the *aediles* and the *tresviri capitales*, both of whom can be considered minor magistrates. The *aediles*¹⁵ fulfilled a variety of tasks which contributed as a whole to the maintenance of public order. They were particularly responsible for the cleaning, maintenance, repair, and accessibility of streets and public places.¹⁶ Lintott believes that theoretically the *aediles* would have been the appropriate magistrates to deal with small-scale violence. They were impeded, however, by the lack of underlings available to assist them, and by an inability to proceed in the face of forcible resistance carried to any great lengths. They could be effective only if supported by other magistrates. In practice they were required to do the equivalent of some "police" work - that is to deal with petty crime and violence as it occurred, but their tasks had little to do with security of the city and large-scale prevention of crime and violence.¹⁷ There is little direct literary evidence suggesting that the *aediles* were general maintainers of security, law, and order,¹⁸ and the evidence has to be augmented with references to their activities under the Empire and the anachronistic early Republican notices.¹⁹

More focus has been placed on the *tresviri capitales* and *nocturni*. By day the former fulfilled their duties as magistrates and governors of the prison and may have been content to investigate breaches of the peace reported to them.²⁰ The latter went on patrol at night to guard against fires and to watch for runaway slaves.²¹ Lintott and Robinson agree that the *tresviri capitales* and the *tresviri nocturni* must have been identical.²² Robinson suggests that the *tresviri* were used against the riff-raff and were a cross between justices-of-the-peace and police-superintendents and that for major public disorder there was no remedy.²³ Nippel, however, believing the evidence too meagre to establish certainty as to

¹⁵ Nippel (1984), 21. See also Lintott (1968), 92-101.

¹⁶ See Mommsen Vol.2, (1952), 499f. See also Lintott (1968), 95

¹⁷ Lintott (1968), 101.

¹⁸ Lintott (1968), 95.

¹⁹ Lintott (1968), 93.

²⁰ Lintott (1968), 104

²¹ *Dig.* 1.15.1.

²² Robinson, 175. See also Jones (1972), 26-27 for the duties of the *tresviri capitales* and *nocturni*. See also Lintott (1968), 105.

²³ Robinson, 180.

their duties as a "sicherheitsdienst", ascribes the assumption that they had such duties to the conviction, rooted in modern experience, that such methods of policing were simply necessary.²⁴

From this there are two important points to be made. Firstly, a common feature is that both the *aediles* and the *tresviri* had limited jurisdiction and power.²⁵ For major public disorder there was no remedy.²⁶ Their effectiveness was severely limited and the violence of the Late Republic showed that they had become inadequate.

Secondly, although Augustus created new forces to deal with the problem of law and order, it did not mean the immediate supersession of the old authorities. They did however, fade away. The *vigintisexvirate*, which had been reduced under Augustus to the *vigintivirate*,²⁷ remained for most the first step in a public career.²⁸ As the *Digest* shows, the *aediles* still had a place up to the second century.²⁹ Dio relates that in 7 BC the *aediles* were still responsible for the supervision of the city.³⁰ Dio and Tacitus record that the *aediles* rather than the *tresviri* (who had lost their fire fighting responsibilities to the *praefectus vigilum*³¹) were responsible for the burning of Cremutius Cordus' books in AD 25.³² However, it was clear that Augustus was not entirely happy with the way the *aediles* were performing their wider duties. As early as 22 BC Augustus ordered the *aediles* to see to it that no building caught fire, and to have any conflagration which did arise, put out. This was in specific response to the Egnatius Rufus affair.³³ As *aedile* Rufus had won popularity with his private fire brigade.³⁴ Augustus must have appreciated the political dangers the office of *aedile* could pose and in AD 6 this function was transferred to the

²⁴ Nippel (1984), 21.

²⁵ Nippel (1984), 21

²⁶ Robinson, 180.

²⁷ Dio 54.26.4. Four of the *Vigintiviri* were concerned with the streets of the city.

²⁸ See Tac. *Ann.* 3.29.1; Dio 60.5.8.

²⁹ *Dig.* 1.15.1.

³⁰ Dio 55.8.7. This formed part of Augustus' general administrative reforms of the city. See Suet. *Aug.* 30.1. Rome was divided into 14 different regions and 265 *vici* (wards) in order to facilitate better control.

³¹ *Dig.* 1.15.1.

³² Dio 57.24.2-5; *Ann.* 4.35.4.

³³ Dio 53.24.4-6; Vell. Pat. 2.91.3.

³⁴ For the problems of dating see Rich (1990), 159.

praefectus vigilum, an office responsible to Augustus alone.³⁵ However, even in Tiberius' reign the *aediles* were responsible for duties such as restricting the amount of food offered for sale in cookshops and eating-houses,³⁶ measures specifically designed to ensure public order.³⁷ Moreover, a remark by Tacitus suggests that the *aediles* kept a register of prostitutes.³⁸ These may have been part of the "police" records which Robinson says were kept on a considerable scale in the offices of the relevant magistrates and officials.³⁹ They also controlled brothels, baths, taverns and other public places from which violence could spring. But these references, argues Robinson, fall more under "control of services" in the *cura urbis*. Street crime seems to have fallen under the jurisdiction of the *praefectus urbi* and his subordinate, the *praefectus vigilum*.⁴⁰

Nevertheless, Augustus felt that these mechanisms of control were not only insufficient but also unreliable.⁴¹ It was time to create forces which were more dependable and which were responsible to him alone.

THE PROBLEMS PERTAINING TO THE EXAMINATION OF THE FORCES OF LAW AND ORDER: DID ROME HAVE A POLICE FORCE?

The immediate problem is the sources. Much of the evidence for each of the forces is sparse and scattered and we have to rely to a large extent on epigraphy.⁴² But although literary sources provide little information, there is enough evidence available to us from which sound and valid conclusions can be drawn about the functions of the three new forces Augustus instituted in the context of the containment of violence.

It is generally held, for example by Freis and Lintott,⁴³ that the absence of a police force was a serious weakness in the Roman Republic and helps to account for its downfall.⁴⁴ A

³⁵ Dio 55.26.4-5. See also 52.24.6.

³⁶ Suet. *Tib.* 34.

³⁷ Robinson, 136.

³⁸ Tac. *Ann.* 2.85.2. Goodyear believes that it is uncertain whether they actually kept such a register. See Goodyear (1981), 439.

³⁹ Robinson, 140.

⁴⁰ Robinson, 189.

⁴¹ Freis, 3.

⁴² See Rainbird, 147. Nippel (1988) at 161, has identified this scarcity as a particular problem in interpreting their functions as forces of order.

⁴³ Freis, 3.

⁴⁴ See Rich (1991), 193.

further obstacle was the lack of a suitable official to whom control of such a "police force" could be assigned.⁴⁵ These circumstances led to the inevitable summoning of professional troops to Rome to uphold law and order.⁴⁶ For Gruen also,⁴⁷ the lack of a police force made it difficult to nip disturbances in the bud. But that absence, he argues, also betokened a recognition that demonstrations and vociferous actions were legitimate expressions of political desire. More interestingly, he claims that the lack of a police force did not stem from an oversight or miscalculation, but from a desire to avoid exacerbating discontent by harsh repressive measures and to respect the traditional idea 'that recourse to private force could often be a legitimate means of expressing grievances or correcting justice.'⁴⁸ For Lintott self-help in the Early and Middle Republic at least was the only effective form of "policing" available. This was a significant weakness in the Roman system, and it meant that in the Late Republic the executive was frequently unable to control violence without themselves having recourse to overruling the law.⁴⁹ The remedies that self-help provided the citizen were no longer adequate. Under the Empire, however, he believes that with increased supervision by magistrates and the existence of a police force, there would have been less need and scope for popular justice.⁵⁰

But what is a police force, and what specifically are its functions? A police force can be defined by its duties; the maintenance of public order and safety comprises a large part of its tasks. The concept of "public" can be deceptive, however, because it carries with it implications of operating for the "public good". This may not necessarily be so, and is a question which must be addressed in this examination. It is impossible to say whether the Roman authorities had an appreciation for such a concept, or whether these forces maintained law and order for the purposes of protecting a political system. Secondly, it is concerned with the enforcement of the law. There is very little evidence for the new forces

⁴⁵ Lintott (1968), 89. See also p.4, 174.

⁴⁶ Lintott (1968), 200.

⁴⁷ Gruen, 447.

⁴⁸ Gruen, 433.

⁴⁹ Lintott (1968), 173.

⁵⁰ Lintott (1968), 14-15. Nevertheless, he does mention an incident in the *Annales* in which the Roman *plebs* came to the aid of innocent people suffering at the hands of the authorities - something which he believes is a reproduction of what occurred in the early days of *provocatio*. See *Ann.* 14.43.4-5.

operating in such a fashion, that is making arrests according to the provisions of specific *leges*. Thirdly, there is the aspect of the detection of crime. Again, we cannot say that there was a force in ancient Rome, which at any stage fulfilled this function.⁵¹ Nor can we say that any of the forces were either equipped or specially trained to fulfil these tasks. What I shall argue, however, is that these forces were employed primarily to maintain a political system, the Principate.

Gruen assumes that the Roman authorities knew and understood what a police force was and what their functions should be. It is nevertheless an assumption which illustrates an important aspect of this issue. Roman attitudes to law and order may have had a different starting point from ours, but objectively they do not seem so different.⁵² Although the introduction of troops into the city does not suggest that the Romans had a sophisticated appreciation of the role of a specialised police force of the kind evident today, they need not have viewed the problem of law and order in a different way. In the Roman state the nature of the confrontation between central authority and local power was dimorphic; it was a confrontation that had a bolder "face-to-face" aspect than in most modern societies: there was simply neither the need nor the means to maintain a disguise. The state itself lacked any coherent centrally organized police force to serve as an effective *civic* counterpart to its military rule of an empire.

In this respect, if we are to seek any equivalent to the modern police it has to be found in the army. The army's role as an internal police force is a neglected subject. Even an examination of the day-to-day activities of soldiers stationed in garrisons *not* on frontiers but in the interior of the provinces (and also in the cities) would yield evidence enough to demonstrate this critical police *function*.⁵³ If so, Rome did not understand the function of a police force in the way it is understood today. For Finley, however, what is of crucial importance is that the army was not available for large-scale police duties until the city-

⁵¹ Robinson, at 192-193, argues that the *quaestionarius*, a post which existed in all three bodies, was responsible for the supervision of interrogations, and as such may have been a "detective". But she concedes that any "detective" work which was undertaken was probably rudimentary.

⁵² Cf. Robinson, 174.

⁵³ Shaw, 18.

state was replaced by a monarchy.⁵⁴

Nippel, in the most detailed discussion of the question, maintains that complaints about the absence of police forces from earlier societies are not only anachronistic, but also distort our perception of the ways in which those societies succeeded in maintaining public order and the reasons why they sometimes failed to do so.⁵⁵ The word "police" has been too loosely applied to these new forces and their magistrates.⁵⁶ He believes that there is a fundamental question already implied in the use of the word, and that the nineteenth century works which deal with the question reflect a usage of the word "policing" which swings between the description of a function - that is securing public order - and the designation of a specialised agency to fulfil this function. While specialized forces of law and order only began to evolve in the late-eighteenth and nineteenth centuries,⁵⁷ and pre-modern societies, such as the Rome of the Early Empire, did not have police forces, many of them did develop expeditious systems of criminal justice.⁵⁸ Therefore, it is not the absence, but the very existence of such forces which is exceptional in universal history.

The principal significance of a specialized, professional police force, argues Nippel, is that it represents a fundamental change in societal and individual attitudes towards and demand for public order. The delegation of the functions of law enforcement to public authorities has had such a decisive impact on the modern perception of law and order that pre-modern societies are often portrayed as lacking the necessary institutions and provisions.⁵⁹ However, I shall argue that Rome managed in the Early Principate to maintain public order more effectively than in the Republic not only because of a new political scenario but also because of a different perspective on the subject which required the presence of military or at least para-military personnel in the city.

Nippel argues that 'the indisputable gain in security and public order had to be paid for

⁵⁴ Finley, 18.

⁵⁵ Nippel (1988), 7-9; Rich (1991), 193-4.

⁵⁶ Nippel (1988), 7.

⁵⁷ See Finley, 18.

⁵⁸ Rich (1991), 195.

⁵⁹ Nippel (1984), 20

with a considerable loss of flexibility in the interaction between rulers and ruled, and with an intensification of control and discipline in the everyday life of most members and strata of society.⁶⁰ In the Principate, however, I shall argue that flexibility was not lost, but in fact, increased. If anything, the interaction between rulers and ruled, became less formal. Ironically, though, control and discipline were extended and intensified by the creation of these new forces. It remains to be seen, however, whether these forces can be considered "police" in the way in which the concept is understood today. More importantly, those functions which can be identified as "police" functions must be isolated and examined. We should not concentrate too narrowly on the competences of magistrates and institutionalized forces, but understand "policing" as a function not necessarily fulfilled by a force specially trained for that purpose.⁶¹

Nippel concedes that the new forces in the Principate represented a new means of policing Rome. Moreover they could always be employed when the *princeps* felt his own position under threat. Importantly, he points out that equations with modern police forces should be avoided particularly since the decision to deploy these forces to suppress riots was of a highly discretionary character. Ultimately they were the product of problems concerning the maintenance of law and order during the Late Republic which, he suggests, have to be seen within the broader framework of the aristocracy increasingly losing their ability to integrate all parts of the urban population socially and politically. The new institutions of the Principate are fundamental elements of a new, comprehensive attempt at regaining stability by intensifying welfare as well as control.⁶²

This raises one particular difference between modern police and the new forces put in place by Augustus. The social welfare element which one accepts so readily in police forces today, is conspicuously absent from the praetorian guards or the urban cohorts. The notion of protecting and serving a community was one that only gained prominence in the nineteenth century.⁶³ Indeed, the repressive and preventive measures which formed part of

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² Nippel (1984), 29.

⁶³ Nippel (1988), 8.

the duties of the Praetorian Guard, the *cohortes urbanae*, and the *vigiles* were aimed at one thing only - the control and stability of the city in order that the emperor could confirm his political position and could govern unchallenged or unthreatened. These new forces owed their allegiance not to the general public, but to their emperor who had created them. There was certainly no culture of service to the community. The objective of welfare, what Nippel calls "wohlfahrtszwecke," was important only inasmuch as it ensured the emperor's position.

To a large extent, therefore, the function of a police force is determined not only by the way in which a community perceives them, but also by that community's perception of law and order and of what requires policing. In this respect, the forces established by Augustus (and carried on by Tiberius) cannot be considered "police" since the relationship between themselves and the community or public they serve, was essentially a passive one. The main remedies available to the public were still determined by self-help. The public never approached these forces for assistance in the way which characterizes the modern relationship between community and police. The forces in the city of Rome in Augustan times were neither equipped nor designed for such a function. Consequently, the question of the legitimacy of these forces cannot be addressed. They were not in a position to establish their own. Their legitimacy was derived from that which the emperor enjoyed.

I shall argue that these forces did execute policing duties even though they were not expressly intended to be police. I shall also argue that their impact on the maintenance of law and order was substantial and cannot be ignored. They were, in terms of law and order, not only a necessary and logical development from the chaos of the Late Republic and Civil War, but also an improvement to Roman society as a whole.

THE PRAETORIAN GUARD

The praetorian guard has its origin as a permanent corps in the city in 27 BC when Augustus decreed that his future bodyguard was to receive twice the rate of pay which was received by the rest of the army.⁶⁴ According to Rich, they were not a new creation,

⁶⁴ Dio 53.11.5.

however: Republican commanders had been customarily accompanied by a praetorian cohort, a hand-picked escort, and from 42 BC both Antony and Augustus had 4,000 praetorians.⁶⁵ Watson, on the other hand, holds that, apart from the name, there was little in common between the Republican bodyguards and the Augustus' new creation.⁶⁶ At Augustus' death there were nine cohorts strong, each of 1000 men.⁶⁷ Three cohorts were left in the city while the others were stationed in nearby Italian towns. However, by AD 23 this number had decreased to nine cohorts under Tiberius,⁶⁸ whose praetorian prefect, Sejanus, had exploited his position to fashion the Guard personally into a powerful, cohesive unit to be feared not only by the general populace of Rome but also anyone who might challenge the authority of the emperor or his prefect. Augustus' initial retention of no more than three cohorts in the city is entirely consistent with his policy of avoiding the appearance of a military occupation of Rome. The presence of the *cohortes praetoriae* could easily be justified because they were the *princeps*' personal troops.⁶⁹

Until 2 BC the Praetorians served as a genuine bodyguard whose primary function was to protect the emperor and provide appropriate military ceremonial in the capital.⁷⁰ They were kept under the direct control of the emperor Augustus and their principal function was the protection of the emperor's person. However, in that year Augustus transferred the command to two *praefecti praetorio* who were regularly *equites*.⁷¹ Rather than suggesting that the office was considered minor, the post of *praefectus* was the pinnacle of the equestrian career.⁷² The office of *praefectus* was to become politically pivotal. The appointment of two *praefecti* in 2 BC was probably a measure to reduce the potential

⁶⁵ Rich (1990), 139.

⁶⁶ Watson, 16. See also Robinson, 182.

⁶⁷ Robinson, 183.

⁶⁸ AD 23. Tac. *Ann* 4.5.3. Robinson, at 182, concedes that there are problems about the numbers and dates of the praetorian guard. This confusion has been increased by the inscription AE 1978.286 (discussed by Letta, 11) which suggests that there was an 11th cohort under Augustus. Wardle at 116, considers the increase consistent with the historical situation of Augustus' last decade that he should have increased his personal protection and that of Italy, and consistent with Tiberius' "republicanism" that he reduced the numbers again.

⁶⁹ Echols, 379-380.

⁷⁰ Campbell, 114. At least part of the Guard did accompany the emperor on campaign in the provinces.

⁷¹ Dio 55.10.10.

⁷² Watson, 16. *Contra* Echols, 380.

political influence of the prefects at a time of crisis for the dynasty.⁷³ The full potential of the post of *praefectus*, however, was realised by AD 23 when Sejanus had so far modified Augustus' conception of the praetorians as to concentrate the entire praetorian force in one large barracks near the *porta Viminalis*.⁷⁴ The proclaimed justification for this concentration of troops was that orders could be given more efficiently, and troops be under better discipline.⁷⁵ Sejanus had centralised the guard into one camp so that 'numeroque et robore et visu inter se fiducia ipsis, in ceteros metus oreretur.'⁷⁶ Tacitus' expression 'si quid subitum ingruat' implies a professed explanation in the combatting of violence.

Augustus required a bodyguard because he had no illusions about the enemies he had made in his revolutionary career.⁷⁷ Tiberius was also sensitive about his personal safety. One of his first acts as *princeps* was to ensure the provision of a bodyguard by the praetorians.⁷⁸ The Praetorians' broader function, the control of the capital city,⁷⁹ stemmed from their duties as bodyguards and was not one with which they were specifically charged. Their high profile and closeness to the emperor was a serious deterrent to those who might challenge his authority. On one occasion Tiberius gave the senators an exhibition of the Praetorian Guard at drill, a display of strength and number intended to intimidate them into cooperation.⁸⁰ From the very beginning the guard was intended to be distinguished from the rest of the army. The main difference was pay, as a guardsman received more than three times as much as an ordinary legionary.⁸¹ A praetorian could also expect more privileges on discharge.⁸² In fact, the praetorian guard was an excellent option for the ambitious soldier. The net effect of these benefits was to bind and ensure the loyalty of an

⁷³ See Dio 52.24.1 for the of a sole prefecture. Reinhold, (1988), 195, writes that here Dio proposes to reduce the power of the *praefectus*, and that his admonition about the office - that there always be two prefects and that there be restrictions on their power - arises from drastic aberrations in the traditional character of the post since the time of Augustus and Tiberius. See also Dio. 55.10.10.

⁷⁴ Suet. *Tib.* 37.1; Tac. *Ann.* 4.2.1.

⁷⁵ Dio 57.19.6 refers to AD 20. See also Tac. *Ann.* 4.2.1.

⁷⁶ Tac. *Ann.* 4.2.1.

⁷⁷ See Campbell, 110-112.

⁷⁸ Suet. *Tib.* 24.1.

⁷⁹ Nippel (1988), 161.

⁸⁰ Dio 57.24.5.

⁸¹ See Brunt (1950), 50-61.

⁸² Campbell, 110. See also Watson, 17-18.

élite and highly visible force. It was a loyalty well rewarded, for example, by Tiberius for the guard's not joining Sejanus' conspiracy.⁸³

Their elevated position was derived from their special function as bodyguard to the emperor, as a consequence of which they had a vital responsibility of permanent vigilance.⁸⁴ Moreover, they accompanied the *princeps* wherever he went in the city. For example, the guard accompanied Tiberius in the Forum and in the Senate house.⁸⁵ The Quintus Haterius incident demonstrates the close attention the guards paid to the protection of their ruler.⁸⁶ They were particularly visible at the games⁸⁷ and were regularly on duty at the theatre.⁸⁸ Here they were not only became an integral part of the ceremony, but were also available for riot control.⁸⁹ Robinson suggests that in this context they could be used like the 19th century British militia, or the 20th century American National Guard.⁹⁰ Their visibility, as an élite force served not only as an effective deterrent against those who plotted to overthrow the emperor, but also advertized the emperor's might.⁹¹ They could also be deployed for the purposes of intimidation. An example of this is Tiberius' decision to surround the house of Libo Drusus with guardsmen. The sight and the sound of them, clanking about in front of the door produced the desired effect of Libo's suicide in front of his dinner-party guests.⁹² The praetorian guard stood as a powerful symbol of the emperor's command of his armies, and helped ensure the stability (and legitimacy) of his rule.⁹³

⁸³ Suet. *Tib.* 48.2.

⁸⁴ Campbell, 111.

⁸⁵ Tac. *Ann.* 1.7.

⁸⁶ Tac. *Ann.* 1.13.6. Quintus Haterius, having irritated Tiberius because of his vacillation in accepting the emperorship, fell at the emperor's knees to make his excuses, and was all but dispatched by the guards, 'prope a militibus interfectum' - because the emperor had fallen flat on his face.

⁸⁷ Cf. Suet. *Aug.* 43.1. The guards that Augustus regularly posted throughout the city during the games and shows to prevent housebreaking since so few people remained at home on these occasions were almost certainly not the Praetorians.

⁸⁸ Tac. *Ann.* 1.77.1. On this occasion a tribune of the Guard was wounded while attempting to keep order. Nero's experiment of relieving them of these duties, 'quo maior species libertatis esset' (Tac. *Ann.* 13.24.1), had very soon to be dropped (Tac. *Ann.* 13.25.4).

⁸⁹ Cf. Tac. *Ann.* 14.61.1.

⁹⁰ Robinson, 182.

⁹¹ Nippel (1984), 23.

⁹² Tac. *Ann.* 2.31.1-2.

⁹³ Campbell, 120.

The powers enjoyed by the *praefectus* reflect the guard's role as a force for law and order. Dio has Maecenas suggest to Augustus that the holders of the post should first and foremost have military experience, but that they should also have proficiency in administrative matters; they should have authority over all the other troops in Italy as well as powers of capital punishment over offenders.⁹⁴ Although it reflects the position some five centuries later, the *Digest* shows that the jurisdiction of the *praefectus* was quite wide. The purpose of the fuller range of authority given to them was to attain improved *publica disciplina*.⁹⁵ It adds that the powers of the *praefecti* have expanded so greatly that there is no possibility of appeal from their decisions.⁹⁶ Clearly, therefore, the powers of the *praefectus* included the limitation of violence within the city.

Although the praetorian guard cannot be said to be a force specifically designed to maintain order within the city, the effect of its presence was that law and order was maintained. Conspiracies and revolutions against the emperor were quelled, and its high profile at the games and other public events which the emperor attended, had a highly intimidatory effect on the population at large. This effect was limited to the immediate vicinity of the emperor since their principal function was the protection of his person. The task of maintaining order on a wider scale was left to another force - the urban cohorts.

THE COHORTES URBANAE

The urban cohorts perhaps correspond most closely with the idea of modern police,⁹⁷ and made a significant, perhaps the most significant, contribution to the containment of violence in the Early Principate. Like the Guard and the *vigiles*, the *cohortes urbanae* were a necessary social and political introduction to Rome. They were a brand new type of unit which, unlike the Guard or the *vigiles*, had no Republican or Hellenistic precedent.⁹⁸

Again two problems immediately present themselves. The first is one of evidence: there is

⁹⁴ Dio 52.24.1-6.

⁹⁵ *Dig.* 1.11.1.*praef.* 'data est plenior licentia ad disciplinae publicae emendationem.'

⁹⁶ *Dig.* 1.11.1.1.

⁹⁷ Nippel (1988), 165, with due caution.

⁹⁸ Freis, 3.

too little in the literary sources about the *cohortes urbanae* to draw adequate conclusions about their role and effectiveness as a force concerned with law and order.⁹⁹ I shall nevertheless argue that while we cannot say conclusively that the *cohortes urbanae* fulfilled the role of police,¹⁰⁰ there is enough evidence to reveal them as a force better equipped than any other at the time to deal with the maintenance of law and order.

The second problem concerns dating. Since there is no record of the *cohortes urbanae* before 27 BC, we know that they must be an Augustan creation. Relying on a passage from Suetonius, Freis assumes that both the praetorian and the urban cohorts were formed simultaneously.¹⁰¹ Again a link may be made with the creation of the *praefectus urbi* in 26 BC and his new powers of disciplining slaves and those other inhabitants who needed threats of force to keep them in order.¹⁰² Alternatively the appointment of L. Calpurnius Piso in AD 12 may mark the creation of the urban cohorts as a completely separate entity from the Guard.¹⁰³ For Echols a crucial date is 16 BC when, he maintains, Augustus detached the three "urban" praetorian cohorts from regular praetorian status and assigned them, as regular city police, to the personal command of the urban prefect. Then, asserts Echols, the urban prefect took command of the unit regularly assigned to him throughout the Empire for the first time.¹⁰⁴

By AD 23 Rome had its own standing army; nine praetorian cohorts - each one thousand strong, and three urban cohorts.¹⁰⁵ This is a substantial number of trained troops in the city. Griffin postulates a possible six thousand men in the *vigiles* and an additional four to six thousand in the urban cohorts. Along with nine thousand, at times twelve thousand, praetorians, this constituted a force of up to twenty-four thousand soldiers which provided

⁹⁹ Freis, 1-3.

¹⁰⁰ Cf. Nippel (1988), 165. Nor is there concrete evidence of specific methods by which they exercised this function.

¹⁰¹ 4. *Aug.* 49.1: 'ceterum numerum partim in urbis partim in sui custodiam adlegit, dimissa Calagurritanorum manu, quam usque ad devictum Antonium'.

¹⁰² *Ann.* 6.11.4-5: 'qui coecreret servitia et quod civium audacia turbidum, nisi vim metuat'.

¹⁰³ Vell. Pat. 2.98.1 states that Piso was 'diligentissimum atque eundem lenissimum securitatis urbanae custodem'. Watson, 19

¹⁰⁴ Echols, 380.

¹⁰⁵ *Ann.* 4.5.3.

one soldier for every fifty people on an estimate of one million people for the urban population. Even on the most conservative estimate (praetorian cohorts of five hundred and not a thousand) we have one soldier for every hundred citizens.¹⁰⁶ This is a greater ratio than is to be found in most modern societies.¹⁰⁷ Consequently, Griffin ascribes the comparative peacefulness of Rome in the Early Empire to the deterrent effect of these large forces stationed in and around the city.¹⁰⁸

The permanent introduction of such an armed force into the city was unprecedented and the citizens of Rome were very uncomfortable about it. Augustus had no guide or precedent for the establishment of the *cohortes urbanae* as a force for the maintenance of law and order.¹⁰⁹ Freis believes that the establishment of the urban cohorts reflects the changed political situation in Rome and the constitution of the Principate.¹¹⁰

Tacitus believed that the situation merited the creation of a new force within the city to establish and maintain law and order. Augustus was prompted to create the office of urban prefect 'ob magnitudinem populi ac tarda legum auxilia sumpsit.'¹¹¹ This is significant, because it indicates clearly to what extent the legal and constitutional structures which were available for social control had become inadequate. Dio too stresses the impact the size of a population has on the extent of civil strife.¹¹² The creation of the urban cohorts had become a matter of social as well as political necessity.

Like the praetorians, the urban cohorts were an élite corps which enjoyed privileges not accorded to the ordinary legions and which were distinguished from other forces in the city.¹¹³ Augustus left in his will more money to the city cohorts than to the citizen

¹⁰⁶ Griffin (1991), 40. For the calculations of numbers, see Kennedy.

¹⁰⁷ Baillie-Reynolds, 15 puts the ratio in London at the time of writing at one "policeman" to three-hundred citizens.

¹⁰⁸ Griffin (1991), 40.

¹⁰⁹ Freis, 3.

¹¹⁰ Freis, 89. Cf. Nippel (1988), 162.

¹¹¹ Tac. *Ann.* 6.11.2.

¹¹² See Dio 52.15.6. In which Dio pleads for universalism and greater uniformity and centralisation of administration. See also 44.2.4 and 47.39.4-5, where Dio argues for the necessity of a monarchy because of the size of the Empire.

¹¹³ See Freis, 91.

soldiers.¹¹⁴ Campbell notes that Augustus would have appreciated the political implications of such large military force at the centre of power and the necessity of ensuring their loyalty.¹¹⁵ It was therefore important both administratively and politically that the new forces in the city, particularly the urban cohorts, should be distinguished from the others.

The urban cohorts also differed from the praetorian guard.¹¹⁶ while the *praefectus urbi* was a proper magistrate,¹¹⁷ and always a senator, with the *toga* as his official dress, the praetorian prefect was charged specifically with the safety and security of the emperor's person against assassination, conspiracy and revolt. The urban prefect had wide jurisdiction within the city which encompassed all criminal matters which have been claimed by him as his own domain.¹¹⁸ The *praefectus urbi* was charged with the duty of keeping the peace among citizens and maintaining order at public games.¹¹⁹ It is difficult to avoid the conclusion that he functioned as a superintendent of police. Tacitus notes that it was an unpopular office, and that the citizens reluctantly showed obedience to it.¹²⁰

The methods the *cohortes urbanae* employed are a matter of deduction. Physical force was clearly available to them since they were armed soldiers. They differed from many modern police forces in that they were organized in a para-military fashion for deployment in particular situations.¹²¹ However, it is unknown to what extent they were called upon to use physical force. Like most police forces they were most effective in a preventative capacity in that they achieved social control through high visibility and intimidation (they were the only ones allowed to carry arms in the city) rather than through retroactive action. For example, in accordance with the duties recorded in the *Digest*¹²² as supervisor of the games, Suetonius confirms that guards were posted in different parts of the city in a purely

¹¹⁴ Suet. *Aug.* 101.2; restored at Tac. *Ann.* 1.8.2.

¹¹⁵ Campbell, 111.

¹¹⁶ Robinson, 183.

¹¹⁷ *Dig.* 1.2.2.33.

¹¹⁸ *Dig.* 1.12.1; 1.12.1.4.

¹¹⁹ *Dig.* 1.12.1.12. See also Dio 52.21.1.

¹²⁰ Tac. *Ann.* 6.10.3.

¹²¹ Nippel (1988), 167. In the modern German terminology he uses the word *Bereitshaftspolizei* - emergency police.

¹²² *Dig.* 1.12.1.12.

preventive role 'ne raritate remanentium grassatoribus obnoxia esset.'¹²³ These would almost certainly have been the urban cohorts.

Administrative decisions also point to the urban cohorts' role as a preventive force. In about 7 BC Augustus divided Rome into fourteen wards, abandoning the old four *regiones*.¹²⁴ This did not only increase administrative efficiency, but also, as Augustus had assigned seven cohorts to duty in the fourteen wards, improved their preventative function. Their even distribution in their duties throughout the city increased the frequency and visibility of their patrols.¹²⁵

The *Digest* hints at another function which can be equated with a modern police function: 'et sane debet etiam dispositos milites stationarios habere ad tuendam popularium quietem et ad referendum sibi quid ubi agatur.'¹²⁶ Here two "normal" police duties are indicated. Firstly, there is the aspect of the policeman on patrol whose very presence prevents the occurrence of the kind of street crime which came directly under the jurisdiction of the *praefectus urbi*. The second is the aspect of the gathering of intelligence which enabled the prefect to perform his tasks as curator of the city more effectively. It is important to point out here, as Freis does,¹²⁷ that the *cohortes urbanae* were not security police in the political sense. They were not a secret service.¹²⁸ The *cohortes urbanae* fulfilled the role of security police only in the widest sense, and the intelligence they gathered was of the kind helpful to the smooth functioning of a large city. For example, we know that lists of undesireables were kept, presumably by the *praefectus urbi* and the *praefectus vigilum* and that they monitored brothels, prostitutes, gambling houses and sources of alcohol - the presumption of innocence for people running such places, writes Robinson, is weaker than normal.¹²⁹ This intelligence was of very little help to Augustus in quelling conspiracies or

¹²³ *Aug.* 43.1.

¹²⁴ *Dio* 55.8.7; *Suet. Aug.* 30.1.

¹²⁵ Echols, 381, assumes that the three-unit arrangement of the urban cohorts antedated the division of the city into fourteen districts.

¹²⁶ *Dig.* 1.12.1.12.

¹²⁷ Freis, 44.

¹²⁸ On this see Sinnigen, 65-72, who argues that Augustus gained most of his political intelligence from the *delatores*. He did not rely on any one agency to detect and expose subversion.

¹²⁹ Robinson, 202.

revolutions, but it was essential for a *praefectus urbi* who took his responsibilities 'ad tuendam popularium quietem' seriously.

Visibility was also an essential part of the effectiveness of the urban cohorts. This was attained partly through administrative moves which saw the city divided up into districts which the urban cohorts patrolled. Moreover, recognisable uniforms must have been useful in maintaining order on the streets.¹³⁰ Also the ratio of *urbani* to population contributed to their visibility. Echols compares the 'modern Italian *carabinieri*, supra-policemen, walking the streets in full-dress uniform, armed with the sword rather than the stick, reserve police whose presence had a powerful inhibiting effect upon potential lawbreakers and a no doubt disabling effect upon felons actually apprehended in their employment.'¹³¹

The *cohortes urbanae* contributed significantly to the containment of violence in Rome in the Early Principate. The face of Roman politics and society, in this respect was changing. However, there was another force which would complete the picture of social control in Rome, and would make a similar contribution to law and order.

THE VIGILES

The *vigiles* occupied a peculiar position in the structure of the Roman army.¹³² Their role as fire-brigade meant that they were perceived differently by the citizens of Rome. It is this role which causes Nippel to suggest that the establishment of the *vigiles* in AD 6 belongs in the context of the efforts of the *princeps* to monopolize the welfare of the *plebs urbana*.¹³³ This is an argument that can only be applied to the urban cohorts and the praetorian guard with some difficulty. For Baillie-Reynolds it was one thing to prevent sedition and violence with the praetorian and urban cohorts, but quite another to provide against petty crimes, while at the same time addressing the question of conflagrations. He believes that the solution to both these problems was the *vigiles*.¹³⁴ Nevertheless, in their functions as fire-

¹³⁰ Robinson, 191, who refers to the drawing of the *urbanus* in *Daremberg and Saglio* (5, 603). (fig.7237)

¹³¹ Echols, 382.

¹³² Watson, 19.

¹³³ Nippel (1988), 167.

¹³⁴ Baillie-Reynolds, 13.

fighters, the *vigiles* came to exercise duties also as keepers of the peace and as agents of law and order.

However, we are yet again confronted with a difficulty with the evidence. In the entire *Annals*, for example, there is no mention of the *vigiles* or their work; such mention that is made of them by the historians describes their use as a purely military force (often in conjunction with the urban cohorts).¹³⁵ In AD 31, for instance, at the fall of Sejanus, the *vigiles* guarded the Temple of Apollo on the Palatine where the meeting of the Senate was held, because the praetorians were not to be trusted.¹³⁶

The *vigiles* were originally a force specifically designed and trained for the combatting of fires. Augustus had realized the city's vulnerability to fire and had acted accordingly in terms of town planning.¹³⁷ But his creation of the fire brigade was not only a necessity but also had political overtones. It was necessary because the inefficient and somewhat haphazard arrangement characteristic of the Republic could not be allowed to continue.¹³⁸ The *tresviri nocturni*, who had been responsible for fighting fires,¹³⁹ were no longer adequate in this regard. It was only in 22 BC that Augustus, probably in response to the fire of the previous year,¹⁴⁰ took concrete steps by forming a special corps of 600 slaves as a fire brigade and put them under the command of the *aediles*.¹⁴¹ It had political overtones because it was important for Augustus not to allow his role as grand patron be usurped by the likes of Egnatius Rufus who had formed his own fire brigade.¹⁴² There were obvious dangers in this.

A serious fire in 7 BC precipitated a second reorganization of the city fire brigade. The city was divided into fourteen different regions each of which was assigned to an official

¹³⁵ Baillie-Reynolds, 26-27.

¹³⁶ Dio 58.9.5-6. This is the earliest record of the *vigiles* acting militarily.

¹³⁷ Cf. Suet. *Aug.* 28.3.

¹³⁸ Cf. Baillie-Reynolds, 19-20.

¹³⁹ See Robinson, 105-106 for fire control in the Republic.

¹⁴⁰ Dio 53.33.5.

¹⁴¹ Dio 54.2.4-5.

¹⁴² See p137.

(Dio calls them "commissioners") who was responsible for its safety.¹⁴³ The striking thing about these early attempts is that they were efforts to contrive some sort of working system out of the old Republican institutions; but the old weakness of having amateurs in charge, which pervaded the whole Roman constitution, made efficient control of such a technical branch as firefighting impossible.¹⁴⁴ Twelve years later, another serious outbreak of fire prompted a third reorganization. Augustus took the matter into his own hands.¹⁴⁵ In AD 6 the *vigiles* were formed.¹⁴⁶ They consisted of seven cohorts, each under the command of a tribune (in total a force of 7000 men).¹⁴⁷ They were organized on a para-military basis and had military ranks and drill, which meant that they could be used as soldiers should the need arise.¹⁴⁸ Watson doubts though, that they were ever regarded as *milites* in any real sense of the word.¹⁴⁹ The *vigiles* are excluded from Tacitus' review of the armed forces for the year AD 23.¹⁵⁰ By the following year, however, the *vigiles* had attained acceptance through the *lex Visellia* by which members obtained citizenship after six years' service. The whole force was under the orders of a *praefectus vigilum* of equestrian rank, and subordinate to the *praefectus urbi*. The fact that he was appointed by the emperor *extra ordinem*¹⁵¹ indicates how seriously the emperor considered the *vigiles*.¹⁵²

This, then was the origin of the *vigiles* as a fire brigade. Yet their duties were to expand to include enforcing order and fighting crime as well. Baillie-Reynolds points out that they differed from the modern fire brigade in one crucial respect, that their duties were not only remedial but also preventative. They performed intensive nightly patrols¹⁵³ in order to discover fires while they were still small and therefore easy to extinguish, and also because there was a need for greater care at night, as people tend to be more careless at night and

¹⁴³ Dio 55.8.7.

¹⁴⁴ Baillie-Reynolds, 22.

¹⁴⁵ *Dig.* 1.15.1.

¹⁴⁶ Strabo 5.3.7; Suet. *Aug.* 25.2; 30.1.; Dio 55.26.4-5.; *Dig.* 1.15.3.*praef.*

¹⁴⁷ Watson, at 19 rejects the notion that they were structured in this way deliberately to emphasize the non-military character of the corps.

¹⁴⁸ See Suet. *Aug.* 25.2

¹⁴⁹ Watson, 19.

¹⁵⁰ *Ann.* 4.5.

¹⁵¹ *Dig.* 1.2.2.33.

¹⁵² Dio tells us that they were so effective that he converted them from an originally temporary experiment, into a permanent institution.

¹⁵³ *Dig.* 1.15.3.3. See also *CIL* 6. 32327, vv. 21-2.

flames may be left unattended or neglected.¹⁵⁴ It was also when most crime was likely to take place. The *praefectus vigilum* therefore had a specific mandate to deal with (and indeed try) cases of arsonists, burglars, thieves and robbers.¹⁵⁵ The exception was if the case was so vicious and notorious that it had to be remitted to the *praefectus urbi*. These patrols were evidently quite effective, as Petronius attests,¹⁵⁶ largely because of their scale. A force of 1000 men per region could cover a lot of ground quickly. The added advantage of this was increased visibility of armed troops and the consequently heightened intimidation factor. These patrols furthermore, gave the *vigiles* the status of a quasi-police force, a side of their activities which, says Baillie-Reynolds, 'was considerably extended and the military nature of the force more and more emphasized, as the Principate developed into a purely military monarchy.'¹⁵⁷

For Watson the position of the *vigiles* would not have been unlike that of many modern police or fire brigades.¹⁵⁸ This view is resisted by both Rainbird and Nippel. Rainbird's view is that we do not need to seek an explanation for the large number of *vigiles* in anything other than firefighting. Their firefighting duties took priority over any minor police duties they may have had. Their method of patrolling would probably appear police-like to the modern reader.¹⁵⁹ To Nippel there are no concrete examples of the *vigiles* having a regular function of maintaining law and order (Ordnungsfunktion).¹⁶⁰ What is important to consider however, is that like the praetorian and urban cohorts there is a very significant visibility factor with regard to the *vigiles*. It is impossible to quantify what violence they might have prevented from their mere presence. Although there may not be many examples of the *vigiles* acting as agents of law and order, they were clearly equipped and empowered to do so, and their presence alone would have achieved the desired effect of dissuading people from considering violence or anything else illegal.

¹⁵⁴ See Rainbird, 151.

¹⁵⁵ *Dig.* 1.15.3.1.

¹⁵⁶ *Sat.* 78: 'Itaque vigiles, qui custodiebant vicinam regionem, rati ardere Trimalchionis domum, effregerunt ianuam subito et cum aqua securibusque tumultuari suo iure coeperunt.'

¹⁵⁷ Baillie-Reynolds, 17.

¹⁵⁸ Watson, 19.

¹⁵⁹ Rainbird, 151.

¹⁶⁰ Nippel (1988), 168.

The *vigiles* were a new creation under Augustus. Although their duties initially encompassed firefighting alone, they came to have a significant impact as a force for the maintainance of law and order throughout the Empire. Along with the other forces created by the emperor, the occurrence of violence of whatever nature, was substantially contained. However, it required a significant change in political and social administration, to such an extent that they can be seen as manifestations of the new order, the Principate.

CHAPTER SIX

COLLECTIVE VIOLENCE IN THE EARLY EMPIRE

INTRODUCTION

I have hitherto discussed the means by which the *princeps*, as personification of the state of the Early Empire, created structures to limit the occurrence of violence. I have attempted to show that there was a significant difference in the Empire from the way in which the Republic confronted or perceived the problem. What remains to be addressed is the manner in which collective violence manifested itself, and the way in which the state reacted to this particular phenomenon. In this regard I shall argue that the new social and political context of the Principate created different motivations for crowd violence as well as necessitated new perspectives as to its control.

The approach to the issue of collective violence will be made from two angles. Firstly, the manner in which mob violence occurred must be dealt with. This incorporates how the "crowd" in question was constituted, what precipitated specific incidents and whether any pattern can be discerned. Secondly, the state's reaction must be considered, which includes its efforts to anticipate and prevent outbreaks of this nature as well as the immediate response to them. Moreover, the collective violence under investigation here is that committed by people who constitute the lower stratum. Indeed, one of the major themes of this thesis has been that the state has had separate responses to the violence of different status groups or classes. The specific composition of the Roman mob will be addressed later as an essential aspect of collective violence.

We need first to consider the incidence of collective violence in the late Republic. Gruen is one of many scholars who has described the late Republic as a period generally regarded as violent and tumultuous.¹ The advent of the Principate made evident certain changes in this respect. Yet it is remarkable that the basic social structure of Roman society remained relatively intact despite the pressures to which it was subject. Why was it that the masses could never mobilize their resources to translate their riots into revolutions even though, as Finley says, 'armed violence or the threat of armed intervention seriously distorted the

¹ Gruen, 405.

substance of city-state politics?'² The social tensions and conflicts of the Early Empire hardly ever led to open revolts.³ The wider empire suffered few nationalistic revolts. Though the masses made their demands, they never rebelled against the basis of the regime.⁴ Even in the Late Republic demonstrations, even the violence, of the *plebs* did not present a challenge to the government.⁵ At times of real suffering when popular uprising might have been anticipated, Tacitus could describe discontent and frustration going no further than 'iuxta seditionem'.⁶ Why was this so?

The answer must lie in the relationship that the *plebs sordida* (as the "rebellious" or "revolutionary" class) had with structural politics in the Early Empire as dominated and controlled by the emperor. Tacitus gives an indication of the *plebs*' disaffection with politics when he paints a picture of a Rome in which 'cuncta discordiis civilibus fessa'.⁷ It was under these conditions that Augustus could impose his own brand of rule, 'nomine principis sub imperium accepit'. In Tacitus' view this was achieved by seducing the Roman people with the enjoyable gift of peace, 'cunctos dulcedine otii pellexit'.⁸ But there were constitutional considerations, too. The political situation had changed to such an extent by AD 14 that no one could remember truly republican government 'quotus quisque reliquus qui rem publicam vidisset. igitur verso civitatis statu nihil usquam prisci et integri moris'.⁹ The interest that the Roman *plebs* may have had in politics had all but disappeared. It is hardly surprising, then, that when Tiberius transferred the elections from the assembly to the senate, in AD 14 there was no resistance to the removal of this right.¹⁰ It had become clear to the masses that the political sphere offered them nothing, and that they had very little formal participation anyway.¹¹ What power the citizen did have had been seriously

² Finley, 4.

³ Alföldy, 153. See also MacMullen (1967), 190.

⁴ E.g. Yavetz (1969), 105.

⁵ Gruen, 448.

⁶ Tac. *Ann.* 6.13.1.

⁷ Tac. *Ann.* 1.1.1.

⁸ Tac. *Ann.* 1.2.1.

⁹ Tac. *Ann.* 1.3.7-4.1.

¹⁰ Tac. *Ann.* 1.15.1. Tacitus' assertion is problematic. The *Tabula Hebana* of AD 19-20 indicates that Tacitus may have been incorrect. The use of *solent* suggests that popular elections still occurred at the time of Germanicus' and Drusus' deaths. See Ehrenberg and Jones (1979), 76.

¹¹ See Brunt (1966), 5. See Dion. Hal. *Ant. Rom.* 4.20.5, 21.1.

devalued to have only ceremonial effect.¹² Yet the *plebs* still managed not only to make their social and political feelings known but also to have them accommodated. These means included protests at public spectacles or riots in the streets.¹³ When the Roman masses took to the streets they were not motivated by dreams of equality or power. Riots were not aimed at tearing down a government or renewing society in a political way but were spontaneous and had very specific and particular objectives. Gruen¹⁴ denies a connection between urban tumult and the downfall of authority, and cautions against equating turbulence with revolution.¹⁵ For him, the proletariat had nothing to do with the downfall of the Republic. He interprets demonstrations, even violence, as extensions of the *plebs*' prerogatives to voice its needs and argues that this practice was common in pre-industrial societies. Violent disorder initiated by the *plebs* was essentially conservative.¹⁶ I shall argue that in the principate, the *princeps* appreciated the danger that lay dormant in a mass demonstration and its political and social implications, and that he directed much of his efforts at preventing, minimising or channelling it into a structure which would facilitate its control.

COLLECTIVE VIOLENCE OF THE LATE REPUBLIC

It is impossible to understand fully the character of mass violence in the Early Principate without some reference to the nature of collective action during the Republic. The first factor which favoured the growth of violence in Rome was that there were too many checks and balances in the Roman constitution which operated in practice only in the interest of the ruling class.¹⁷ Reformers had to use force, or at least to create the conditions in which the senate had reason to fear its use.¹⁸

The nature of violence during the Republic was more specifically political, e.g. to force

¹² In AD 5, for example, the elections were used as an occasion for honouring dead princes of the imperial house. In AD 19 the gesture was repeated for Germanicus, and in AD 23 for Drusus, even after the pretence of of a real choice for the electorate had been abandoned.

¹³ Garnsey/Saller (1987), 150.

¹⁴ Gruen, 434.

¹⁵ Gruen, 405.

¹⁶ Gruen, 448.

¹⁷ The other two are population, and misery and squalor. These will be dealt with later.

¹⁸ Brunt (1966), 8.

measures through an assembly, to influence the outcome of an election or trial, or to intimidate or even kill political opponents.¹⁹ This kind of violence reached a climax in 52 BC, when Milo succeeded in killing Clodius outside Rome and a violent mob brought the body into the senate-house, tore down the tribunal and benches and burned everything, including the senate-house.²⁰ Similarly, at the cremation of Caesar's body, the mob tore to pieces the poet Cinna believing him to have sympathised with Caesar's assassins.²¹

Both Brunt²² and Newbold²³ have inferred in certain incidents the existence of "class hatred" - in 52 BC a mob attacked and killed those who betrayed their wealth and class through their jewelry and fine clothes.²⁴ But Gruen's explanation is perhaps more realistic: that in mob action such as this, the poor would often seize the opportunity to harass the rich, destroy property, and take out their frustrations against their economic betters. It is merely an opportunity seized by the poor to capitalise economically on a situation that would not often have been presented to them. To him this is a natural practice and one which was often repeated in most other times and places.²⁵ The basic issue was political.

In the Republic the majority of violent outbursts had little connection with social grievances. Most demonstrations were arranged by politicians and political factions who were mobilising clients and supporters for their own purposes. Agitation revolved around legislative proposals, criminal trials and electoral contests. Collective violence of the Late Republic was organized by opportunistic leaders who espoused plebeian causes for the purposes of mobilising a crowd with the aim of satisfying their own political ambitions. Alternatively crowds could simply be hired or bribed, as by Clodius, who directed the kind of mob violence and abuse which was a far cry from the spontaneous outbursts of feeling of the time of the Gracchi. He was able to capitalize on the old traditions which lived on,

¹⁹ Lintott (1968), 204. Cf. Brunt, 4; see pages 18-21 for a short sketch of the progress of violence in the Late Republic.

²⁰ Asconius 32-3; App. *B.C.* 2.20-23; Dio 40.48.2-49.3.

²¹ App. *B.C.* 2.143-8; Dio 44.35-51; Plut. *Caes.* 68, *Ant.* 14, *Brut.* 18, 20.

²² Brunt, 22.

²³ Newbold, 120.

²⁴ Sall. *Cat.* 37; Cic. *Mil.* 95; *Sest.* 49; 111; *Dom.* 12-13; *Planc.* 86; Appian. *B.C.* 2.22.

²⁵ Gruen, 439.

and create a 'solidarity among his gangs like that of the old plebs and to give his movement a momentum of its own.'²⁶ It was felt though, that crowd violence of this nature had the potential within it to jeopardise state security, something which was of paramount importance.

The control or containment of violence of this nature necessarily became problematic, as the difficulty in formulating effective legislation against it testifies.²⁷ The executive was frequently unable to control matters without recourse to overruling the law. A complicating factor was a political culture which vigorously rejected the use of armed forces to suppress disorder in the city. For Lintott, the cause of collective violence was the tendency to use it to enforce political beliefs and personal claims, with or without official sanction. 'Its causes were the nature of Roman society and law, the character of the Republican constitution itself, and not least the cult of the expedient when using force on other human beings.'²⁸

THE ANATOMY OF COLLECTIVE VIOLENCE.

Mob violence must be viewed within the broader context of collective behaviour generally, for it is from collective behaviour that mob violence will occur. It is necessary here to make the distinction between a demonstration and a riot. Both phenomena can be seen as interactions between state authority and its subjects. This is particularly true of the Early Principate where the plebs had recognised the structures of political expression as ineffective and largely abandoned them. Moreover, demonstrations, which are actions not intrinsically violent, do not always result in violence. The American social scientist, Charles Tilly has postulated a definite connection between the two, and suggests that the use of the word "riot" obscures this connection.²⁹ Riots grow out of actions which are similar to a much larger number of collective actions which occur without violence. The composition of a demonstration, therefore, does not differ significantly from that of a riot. Those demonstrations which occurred during the Early Principate carried with them an

²⁶ Lintott (1968), 10.

²⁷ For the development in the Republic of legislation against violence, see chapter 2. See also Lintott (1968), 107-124.

²⁸ Lintott (1968), 207.

²⁹ Tilly, 177. On theories of collective violence generally, see Rule.

enormous potential for violence, and given the ratio in numbers between the upper and lower strata,³⁰ as well as the chronic disparity in wealth, it is remarkable that there was no wider scale mob violence at the time.

One of the reasons for the lack of mob violence is the way in which collections of individuals behave. Tilly has reduced collective action to five basic components, all of which must be evident with sufficient intensity before a demonstration occurs. In the first place there must be interests which are the gains and losses resulting from the group's interaction. Here there is a degree of conflict between individual and collective interests which, Tilly argues,³¹ we should treat as a variable affecting the likelihood and character of collective action.

Secondly, organization must be apparent. Tilly defines this as that aspect of a group's structure which most directly affects its capacity to act on its own interests, and entails those structures within the group which best achieve group cohesion.³² The third component, mobilisation,³³ is the process by which a group acquires collective control over the resources needed for action. It identifies the process by which a group goes from being a passive collection of individuals to an active participant of public life. The group may require a catalyst, such as a leader to champion the interests of a group in order for both organisation and mobilisation to be realized.

The fourth component, opportunity,³⁴ concerns the relationship between a group and the world around it. Changes in the relationship sometimes threaten the group's interests and sometimes provide new chances to act on them. The group must be given the opportunity

³⁰ In Tacitus' day the senatorial class constituted two thousandths of one percent of the Empire, while the *Equites* probably totalled less than a tenth of one percent. If the population of the Empire was around 50 million souls, the senatorial class and the *Equites* amounted to fewer than fifty-five thousand (MacMullen (1974), 88-89). Even in Rome, the population of which at the time of Cicero was around 750 000, the odds were demographically stacked against the upper strata. See Brunt (1966), 9.

³¹ Tilly, 59-62.

³² Tilly, 62-69.

³³ Tilly, 69-84.

³⁴ Tilly, 98-115.

to act together. Finally there is collective action itself, which comprises people acting together in pursuit of common interests, and results from the changing combinations of interests, organisation, mobilisation and opportunity.

Augustus and his successors addressed each component in one way or another. The new political scenario allowed him, through his *tribunicia potestas*, to act ostensibly as patron to the *plebs* and put him in a position to regulate both individual and collective interest. It also allowed him to usurp the functions usually reserved for champions of the *plebs*. Consequently mobilisation was inhibited. Those, like M. Egnatius Rufus³⁵ who attempted to obtain popular political support by providing better services, and so eclipsing the image and influence of the emperor, were soon dealt with effectively in the *maiestas* courts or elsewhere. His reforms affected social mobility to such an extent that group organisation was limited and the threat to the state minimised. Through the creation and monopoly of the games and the circus, the opportunity to act together was afforded, but rigorously controlled. If it came to violent collective action, the forces required to quell it were put in place.

THE COMPOSITION OF THE ROMAN MOB

The composition of the Roman *plebs* is one of the reasons why collective action at Rome never evolved into open rebellion. It is difficult to understand how the *plebs* functioned as there are few detailed or favourable references to them in our sources. The Roman upper class felt contempt for the urban *plebs* - ³⁶ Tacitus certainly despised them,³⁷ and Dio regarded the masses as insolent and fickle, always searching for new solutions to crises and ready to cast blame on those who had already fallen from power. They were capable only of idle prattle.³⁸

³⁵ Dio 53.24.4-6. Rufus had won popularity as an *aedile* in 21 BC by organizing a private fire brigade. In the following year he illegally held the praetorship and, in 19, he sought, no less illegally, the consulship from C. Sentius Saturninus. Vell. Pat. (2.92) describes how Egnatius sought to stand for the consulship 'florentem favore publico sperantemque aedilitati ita consulatum praeturae se iuncturum.' When Sentius refused to accept his candidacy, rioting ensued. Rufus was executed when a plot to assassinate Augustus was discovered. See Millar (1964), 87-88.

³⁶ Alföldy, 135. See also MacMullen (1984), 114-117.

³⁷ *Hist.* 1.4: 'sordida et circo et theatri sueta.'

³⁸ See Millar (1964), 76, for Dio's assessment of the mob's judgement in politics.

The precise composition of the *plebs*, is a vexed question. The *plebs* cannot be seen to be homogeneous.³⁹ The social composition of the lower strata, which was even more heterogeneous than the upper strata, limited the possibility of any meaningful or threatening solidarity. The economic, social and cultural diversity within the lower strata created frictions which were impossible to ignore. The lower strata consisted of motley sections of the masses from town and country, which can in no way be termed *ordines*, but can at best be described as various strata, without implying that these social groups were stratified in a hierarchy. These strata shared common characteristics, particularly with regard to their economic activities and their legal status as *ingenui*, *liberti* and *servi*. The border lines between the various lower strata ran vertically in accordance with these characteristics. There were no clear social divisions running horizontally through the lower strata.⁴⁰ The *plebs* was composed of slaves, freedmen, shopkeepers, craftsmen, professionals, skilled and unskilled labourers, displaced farmers and the poor generally. For our period there were also those who had sought refuge in the city from the civil wars. To expect solidarity in this context would be unrealistic.⁴¹ For example, when the freedmen rioted in 30 BC in response to tax increases, the other elements of the *plebs* did not join in, and order was fairly easily restored.⁴²

Through the establishment of a stable and enduring social order an armed revolution offered the *plebs* little benefit. Under Augustus the Principate evolved a political framework best fitted to hold together Roman society: 'the divisions and tensions deriving from the unequal distribution of wealth, rank and status were counterbalanced by forces of cohesion such as family and household, structural, vertical and horizontal relationships between individuals and households and the ideological apparatus of the state.'⁴³ It is tempting at this stage to entertain the idea of "class struggle" in this context. Garnsey and Saller, and Alföldy reject class analysis as unrealistic.⁴⁴ One difficulty is that of specific

³⁹ See Alföldy, 105; Gruen, 435; Yavetz (1969), 136.

⁴⁰ Yavetz (1969), 147.

⁴¹ Gruen, 405.

⁴² Dio. 50.10.3-5.

⁴³ Garnsey/Saller, 107.

⁴⁴ Garnsey/Saller, 109; Alföldy, 149.

"class" membership which is open to conflicting interpretations. Class boundaries are inevitably in a state of flux. More importantly, however, Roman society cannot be considered a "class" society because a middle class would have to be introduced between the upper and lower classes which would not only own the means of production, but would also play a direct part in production itself. Moreover, the application of Marxist "class analysis" is inappropriate to a pre-industrial, pre-capitalist society such as Rome. There was no genuine "middle class" or bourgeoisie in the sense of an intermediate group with independent economic resources or social standing,⁴⁵ and which was a burden weighing heavily on the working class on the one hand, and increased the social security and power of the upper class on the other. The social structure rendered "class struggle" impossible, and prevented the development of a revolutionary middle class which would have acted as catalyst for rebellion. The bonds of dependency on the upper strata were too strong for the lower strata to resist. The system of patronage and clientage, for example, a central feature of Roman social and political life, meant that a large proportion of the proletariat had closer ties to their *patroni* and *domini* than to others of their own social class.⁴⁶ The social structure of the early Principate was such that the forces which divided the lower strata into competitive sections, were greater than those forces which unified them into one cohesive entity. Consequently the lower strata could not develop as a universal revolutionary "class".

⁴⁵ Garnsey/Saller, 116. MacMullen (1984), 89, warns against the insistence that there must be a middle class and that it must be sought where we are used to finding it today.

⁴⁶ Alföldy, 153; Gruen, 435. The importance of patronage as a distinctive and central element in Roman culture and ideology cannot be underestimated. Wallace-Hadrill (1989), 63-89, argues that Dionysius of Halicarnassus' analysis of patronage as an instrument of social control that kept the population subject to the ruling class, and was well designed to avoid social conflict (sedition), is essentially correct - it was a flexible method of integration and simultaneously of social control (See Dion. Hal. *Ant. Rom.* 2.9-11. Johnson and Dandeker, 235-6, add an extra dimension in relation to the state and the community: 'Whether we conceive of the state as those "agencies" or an "apparatus" mediating the common affairs of a political community, or, as sometimes defined, as a set of functions (e.g. social integration, goal attainment) or follow Weber in identifying such functions with the monopolization of means (i.e. of the means of violence, taxation and administration) we are forced to the conclusion that in Roman society such agencies are patronage structures; that the operation of such functions and the utilization of such means are impossible even to describe except in terms of patronage.' On the *plebs* as the "client" of the emperor, see Veyne, 390-393. On Augustus as patron, see Veyne, 255-257 and Griffin (1991), 32-34.

The strength of the Principate also made any serious thoughts of rebellion pointless. Although it cannot be said that social harmony existed, there was far less reason for social unrest than in the last two centuries of the Republic. The redefinitions of the positions of power meant that there were hardly any conflicts within the upper strata which could not be resolved peacefully. Augustus saw to it that the needs of the urban *plebs* were regularly met. In this he set a precedent. Consequently those riots which did occur, were relatively spontaneous, sporadic, isolated and had specific objectives in mind, rather than part of an ideological programme in search of political equality or renovation.

THE CAUSES OF RIOTS AND DEMONSTRATIONS.

It is in the needs of the *plebs* and the *princeps*' provision for them that the causes of disorder can be detected. Addressing the needs of the masses was one of the principal methods of preventing social and political violence from below. Here the relationship between the executive and the masses became "informal", that is the relationship operated not through any structured political process characterised by representation and participation, but more on an *ad hoc* basis where grievances and needs were voiced as they were felt. The question is whether a pattern was established in the violent (or non-violent) group confrontations between authority and the masses so that a system of unwritten rules can be perceived which eventually achieved more for the masses than the formal political structures of the Republic could provide.

There were, however, certain areas, which came to be, or remained, areas of sensitivity and which provided the spark for demonstrations or riots. Here the emperor could anticipate the needs of the masses and accommodate them accordingly, while the masses could effectively articulate their grievances.

THE POLITICAL SPHERE.

Although the *plebs* had lost faith in the political system, and although their political influence had become almost negligible, there were instances when political events stirred the crowd into violent action. The riots of 22 BC had a specific political purpose in the

installation of Augustus as *dictator* - an office which was anathema to the Roman upper classes.⁴⁷ Dio reports riots over the consular elections the following year, an incident which the historian used as proof of the futility of democratic government.⁴⁸ In 20 BC there were disturbances over elections for the prefect of the city. These were riots which could not be quelled, so the city went without a prefect for that year.⁴⁹ There were also factional disorders when Augustus refused the consulship for 19 BC. On this occasion lives were lost and murders were committed.⁵⁰ In AD 4 the faction of Julia the elder which had always been strong with the people began to clamour for her recall from exile. Although Augustus stubbornly refused to entertain this idea, there were scenes in which firebrands were thrown into the Tiber as a means of protest. Eventually there was such pressure that she was at least brought from the island to the mainland.⁵¹ In AD 7 there were more factional disturbances as a result of elections. Augustus considered them serious enough to appoint all officials because of them.⁵²

Demonstrations were often related to people prominent in politics. They could either be admired or despised. The prospect of the return of Agrippa Postumus caused great popular excitement in AD 16, to such an extent that Tacitus was moved to speak of the imminence of *discordia* and *arma civilia*.⁵³ The imposter Clemens was eventually suppressed. Germanicus' death also precipitated a serious crisis at Rome.⁵⁴ The whole city shut down at the news of his death. Rumours of his recovery from illness caused crowds to run through the city and break open the temple doors.⁵⁵ In the following year, when it became apparent that the senate might spare Piso, who was suspected of murdering Germanicus, the crowd gathered outside the senate-house and shouted that they would lynch him, should

⁴⁷ Suet. *Aug.* 52.1; Dio 54.1.3; *RG* 5.1. Garnsey (1989), 240) terms this last of the "old style" riots because they were typically aimed at the senate in session.

⁴⁸ See Dio 54.6.1-2: 'This episode made it clear that it was impossible for a democratic system of government to be carried on among them (the people of Rome), for even though they possessed little power either in the electoral process, or in the conduct of the offices of state, they fell to rioting.'

⁴⁹ Dio 54.6.6.

⁵⁰ Dio 54.10.1.

⁵¹ Dio 55.13.1. See Levick (1976a).

⁵² Dio 55.34.2.

⁵³ Tac. *Ann.* 2.39.1; See also Dio 57.16.3-4.

⁵⁴ Tac. *Ann.* 3.4.1.

⁵⁵ Tac. *Ann.* 2.82.3-4.

he be acquitted. Then they dragged statues of him to the Gemonian steps⁵⁶ and began to destroy them.⁵⁷ The Gemonian Steps also feature when Tiberius died. The crowd had gathered and threatened to drag his body off with a hook and fling it on the steps.⁵⁸

ECONOMIC AND SOCIAL STRESS.

Economic stress is one of the major factors which lead to riot and demonstration. Burdens of debt, the increase in rents and in rates of interest, crippling taxes, and the housing shortage which was the legacy of the rapid urbanisation because of the civil wars, and the collapse of homes due to fires or the flooding of the Tiber all made the life of the lower strata very difficult indeed.

However, one issue to which the masses were especially sensitive and which was to be the greatest cause of crowd violence was that of food shortage. In the context of the Late Republic four factors made the problem particularly acute.⁵⁹ War was the most significant factor responsible: an army made crippling demands on the city's grain reserves, while campaigns and battles in the country rendered production difficult, to say the least; piracy interfered with the delivery systems of grain from the provinces to the capital. Natural causes such as flood, pestilence and harvest failure severely affected the provision of grain.⁶⁰ These factors led to speculation and the manipulation in the price of corn. Some of these factors persisted into the principate. Although Augustus could boast in the *Res Gestae* that he had freed the sea from pirates,⁶¹ the natural phenomena were uncontrollable: in 23 and 22 BC the Tiber burst its banks and flooded Rome, there was plague in Italy; fields went untillied and people were starving.⁶² The riots of 22 BC were provoked by the scarcity and exorbitant price of corn. The people demanded that Augustus be given special charge of the corn supply as well a dictatorship. Although he refused the dictatorship he did accept charge of the corn supply, to such an effect that he was able to deliver the city

⁵⁶ On the significance of the Gemonian steps see chapter 4, p107, 114.

⁵⁷ Tac. *Ann.* 3.14.4.

⁵⁸ Suet. *Tib.* 75.1.

⁵⁹ Garnsey (1989), 203-6.

⁶⁰ In 56 BC, for example, there were infertile fields and poor harvests. See Rickman, 55.

⁶¹ 25.

⁶² See Dio.54.1.1-2.

from apprehension and immediate danger within a few days, and could advertise that it had been done 'meis impensis'.⁶³

The people's common reaction in the Late Republic to food shortage was hostile demonstration which often turned into riot. The authorities in the early 30s BC had to use repression to quell mob violence which erupted in serious and prolonged riots. There was neither agent nor mechanism to mediate between the consumers of Rome and Octavian who posed as their leader. Appian describes the resultant confrontation between Octavian and the crowd, an ugly scene which included stoning and threats of burning and plunder. Indeed, Octavian himself almost lost his life. Dio writes of statues being torn down,⁶⁴ which is a common action of a frustrated Roman mob.

Augustus could not fail to take personal interest in the matter of corn supply to the city. To ensure stability, a repetition of the famine and crowd violence of 43-36 BC had to be avoided. Augustus' personal intervention in the food supply to Rome developed a tradition of liberality which his successors could not ignore,⁶⁵ since the standard response to food crisis was simply largesse. Moreover, the acquisition of Egypt as a Roman province in 30 BC and the creation of the office of *praefectus annonae* sometime between AD 8 and 14,⁶⁶ not only reduced the capital's vulnerability to food crisis, but gave the emperor the means of greater social control through the manipulation of its supply.

Nevertheless, there were two periods in Augustus' reign when Rome was frighteningly short of corn - 22 BC, and in AD 6.⁶⁷ It is difficult to understand the events of 23-19 BC without taking into account the riots and angry outbursts of the enraged crowd.⁶⁸

⁶³ RG 5.2. Carter, 175, suggests that if this is true, it must raise the suspicion that Augustus had been stockpiling corn (and thus helped to create the shortage?) against such an eventuality, in order to emphasize his image as benefactor to his stricken people. He finds it impossible to believe, given the difficulties of the delivery and transport systems of the time, that Augustus was able to relieve a major shortage in a city of almost one million, 'intra paucos dies', without having massive stores ready to hand.

⁶⁴ Appian. *B.C.* 5.67-8. Dio 48.31.

⁶⁵ Garnsey (1989), 218.

⁶⁶ See Rickman, 63-4.

⁶⁷ Vell. Pat. 2.94.3. See Garnsey (1989), 219; Rickman, 64.

⁶⁸ Yavetz (1969), 26.

From AD 5 to 9 there were intermittent food crises at Rome and the possibility of violent demonstration could never have been too far away. In 5 AD there was flood, fire, earthquake as well as well as riots and famine.⁶⁹ The situation was so grave that Augustus had to protect himself by increasing the pay for the Praetorian Guard.⁷⁰ Dio tells us that in AD 6 a food crisis compounded by a serious fire put the masses in a revolutionary mood,⁷¹ which did not pass until the following year when the grain shortage was over. But disorder and unease returned the same year and Augustus was forced to 'do anything that would make the crowd cheerful, regarding such measures as necessary.'⁷² In AD 9 the Varus crisis worsened yet another food shortage. Augustus was so nervous of an uprising that he despatched those Germans and Gauls who were serving in the Praetorian Guard to various islands and expelled those who were unarmed from capital.⁷³

Under Tiberius, the people protested against the price of corn in AD 19. The emperor's reaction was to set a maximum price, while compensating the merchants.⁷⁴ In AD 32, the grain price again caused disturbances - 'iuxta seditionem'.⁷⁵ The only response from Tiberius was to scold the magistrates and senate, and to rebuke the people through a consular edict. These instances explain just how sensitive the *princeps* was to food shortage in the Early Empire.

The *plebs* were also beset by chronic indebtedness and financial crisis. Tacitus wrote that not only was money-lending an ancient problem in Rome, but also 'seditionum discordiamque creberrima causa.'⁷⁶ Rent riots had a bloody history: in the 40's BC there had been prolonged agitation about urban rents. There was bloodshed in 48 after the consul had driven out of the city Marcus Caelius who had proposed a year's remission from rent.

⁶⁹ Dio 55.22.3, 26.2; Suet. *Aug.* 42.3. According to Dio the floods were so severe that the city was navigable for seven days.

⁷⁰ Dio 55.23.1.

⁷¹ Dio 55.26-27.

⁷² Dio 55.31.3-4.

⁷³ Dio 56.12.1, 23.4.

⁷⁴ Tac. *Ann.* 2.87.1.

⁷⁵ Tac. *Ann.* 6.13.1.

⁷⁶ Tac. *Ann.* 6.16.2

This remission was eventually granted by Caesar the following year, and even extended after further disorders had resulted in the deaths of over eight hundred rioters.⁷⁷ Augustus must have been mindful of these events when he embarked on his programme of reform. Socio-economic crises had far-reaching ramifications. Fire, flood and housing collapse increased the number of money hungry-landlords and building contractors who exploited the existing natural and social difficulties. Augustus countered this exploitation by being the first to regulate by legislation the hitherto neglected field of building.⁷⁸ This was clearly an effort to minimise the frustrations of the masses and satisfy their grievances.

The other two factors which Brunt highlights as responsible for the growth of violence in the Late Republic are so interrelated that they can be treated as one. These are the problems of over-population and the consequent misery and squalor which the population had to endure.⁷⁹ The civil wars had caused people to flock to the safety of the city which meant that Rome had become home to almost a million people - a city too large for its resources.⁸⁰ Speculation, large scale profit-taking and exploitation had reduced the masses of Rome to such squalid conditions that they became responsive to politicians who held out the possibility of their improvement, and also bred hostility towards the upper strata who were indifferent to their interests.

The huge population of Rome exercised enormous pressure on all aspects of plebeian life. Yavetz writes of unemployment, unhygienic conditions and a resultant high death rate.⁸¹ Frequent fires and floods made the city physically a dangerous and unhealthy place to be. The notion of planning a city as a means of preventing these calamities had not been addressed comprehensively until Augustus' time.⁸² The *insulae* which the masses inhabited were overcrowded and extremely dangerous.⁸³ Narrow streets, inadequate water and sanitation increased tension. MacMullen paints a gloomy but realistic picture of urban life

⁷⁷ Caes. *B.C.* 3.20-22. Dio 42.29.2, 32.2. See also Brunt (1966), 13.

⁷⁸ Yavetz (1958), 500-17.

⁷⁹ Brunt (1966), 8, 11.

⁸⁰ See footnote 30. See also Yavetz (1958), 500; and Robinson, 8.

⁸¹ Brunt (1966), at 11 (footnote 30) cautions that references and interpretation of the texts are not all reliable.

⁸² Robinson, 5-32.

⁸³ Aul. Gell. *N.A.* 15.1. See also Yavetz (1958), 505.

which, due to the Mediterranean climate, invited people to live out-of-doors where there was very little space. The disparity in ratio between public and private space meant that the crowded parts were very crowded, while the open parts and public buildings which the wealthy provided, were generous. It was here that brawls and riots might start.⁸⁴ Moreover, any disturbance in such a crowded city was likely to cause a crowd to congregate. The *vigiles* would more than likely have had to deal with it, thus creating a situation of conflict between state and subject.

Augustus' response by way of building programme was not motivated by an altruistic desire to raise the quality of life of the masses, nor was it merely to make the capital architecturally worthy of her position, 'pro maiestate imperii.'⁸⁵ Although he realised the city's vulnerability to fire⁸⁶ and flood, the improvement and control of services,⁸⁷ the tightening of building regulations,⁸⁸ the better provision of food and water and the monopoly of its provision,⁸⁹ all had the appeasement and control of the masses of Rome as a specific objective. The economic life of a plebeian was always hard. Nevertheless, Augustus was able to give the impression that he was addressing their grievances. But in this he set a precedent which his successors were not always able to follow.

MOB VIOLENCE AT THE THEATRE AND AT THE GAMES.

The theatres, arenas and circuses of Rome, as assembly points for large crowds, in some cases as large as 250 000, justify their discussion in the context of collective violence. The classic statement on the *plebs* and the games comes from Cicero, in which he states that there are three places above all where the will of the people makes itself known: the *contiones*, the *comitia* and *ludorum gladiatorumque consessus*.⁹⁰ Since the masses lost much interest in the formal structures of political participation, considering them

⁸⁴ MacMullen (1967), 166-7.

⁸⁵ Suet. *Aug.* 28.3.

⁸⁶ Robinson, at 108, he argues that the use of concrete and brick in the early Principate had a significant impact on the limitation of fires.

⁸⁷ See Robinson, 130-143.

⁸⁸ Robinson, 33ff. Augustus was the first to limit the construction of houses to a height of 70ft. See Strabo 5.3.7.

⁸⁹ Robinson, 95-110. At 95 he makes the point that the supplies of water to Rome seem to have been more lavish than those of modern western cities.

⁹⁰ *Sest.* 106.

ineffective, the arenas and theatres and the violence that occurred in them and the potential for violence that they held, must assume a political importance.⁹¹ For the *plebs* the games, the circus and the theatre became the context in which meaningful communication and exchange between authority and subject could take place.⁹² They became the places where the masses expressed themselves politically.⁹³ But it also became a means through which large scale mob violence could be dissipated and controlled.

Nevertheless, the theatre and the games regularly witnessed instances of crowd violence. A distinction should be drawn between the violence which had its roots outside the physical confines of the arena, and that which was specifically arena or theatre related. In the former case, the grievance at hand could be aired directly at the face of the person whom they considered best equipped to deal with it. In AD 32, for example, the high price of corn caused serious disturbances in the theatre. Tacitus tells us that the demands were made with a presumption rarely shown to emperors and that it almost led to revolution.⁹⁴ In the latter case, the theatre itself became a source of disturbance. The theatre already had a long history of disorder which, according to Goodyear, the introduction of the *pantomimi* exacerbated.⁹⁵ For Cameron, the pantomime riots of AD 14 fitted the classic pattern for the factional riot of the Late Empire.⁹⁶ The pantomime riots were important events in the context of political developments at the time. Slater, in his detailed treatment of the subject, believes that the pantomime as a theatrical event possibly contributed to a popular demand for theatre, for by 11 BC at the latest, two more permanent theatres had been built, providing a seating capacity unparalleled in the ancient world.⁹⁷ His view is that

⁹¹ Cf. Auguet, 196: 'the more the public shouted itself hoarse at the circus, the less importance its voice had in the assemblies.'

⁹² See Veyne, 400-401.

⁹³ Tengström, 54 argues that the theatre can be regarded as a substitute for the *contio* and that this development started towards the end of the Republic. See also Auguet, 200. On the politicization of the circus, see Veyne, 398ff.

⁹⁴ Tac. *Ann.* 6.13.1: 'isdem consulibus gravitate annonae iuxta seditionem ventum; multaque, et plures per dies, in theatro licentius efflagitata, quam solitum adversum imperatorem.'

⁹⁵ Goodyear (Vol.2), 173. See also Suet. *Aug.* 45.4.

⁹⁶ Slater, 223.

⁹⁷ Slater, 122. Humphrey, at 2-3, writes that the theatre of Pompey, dedicated in 55 BC, was Rome's first permanent theatre. Two more theatres were built in the Augustan period, those of Marcellus (13 or 11 BC) and Balbus (13 BC). These remained Rome's three chief theatres to the Late Empire.

these riots have to be examined against the background of the death of Augustus, who had enjoyed both the amphitheatre and theatre and had been careful to please the people by his presence,⁹⁸ and the accession of the somewhat more stolid and conservative Tiberius who neither relished spectacle nor regularly attended them.⁹⁹ The riots of AD 14 at the *ludi Augustales* were caused by popular opposition to attempts by Tiberius and the senate to control the power, and the costs, of the pantomimes beyond the level they were willing to tolerate.¹⁰⁰ This was done (a barely a month after the death of Augustus who had after all been responsible for the rise of the pantomimes) because of the senate's concern with the public processions of the pantomimes, which could evidently attract crowds huge enough to constitute a public threat.¹⁰¹ Tiberius had misjudged their popular appeal.

The following year, AD 15, saw the resurgence of pantomime riots.¹⁰² This time they were more serious and violent. There were civilian casualties and soldiers including a centurion were killed.¹⁰³ Tiberius and the senate realised that more effective steps had to be taken. The senate moved for flogging the pantomimes, but this was vetoed by a tribune on the grounds that Augustus, who had admired the pantomimes, would not have approved. Specific measures were introduced to limit the monies paid to the actors and to check the unruliness of their supporters - 'adversus lasciviam fautorum.' Senators were forbidden to go the houses of the pantomimes; *equites* were barred from joining their processions. The pantomimes could not appear, except in the open public (and not in private houses), and praetors were to have the power of punishing offending spectators with exile.¹⁰⁴

However these measures proved ineffective, and the trouble continued. In AD 23 they recurred with further loss of blood - 'caede in theatro per discordiam.'¹⁰⁵ Tacitus,

⁹⁸ Suet. *Aug.* 45.2. See also Newbold, 110-143.

⁹⁹ Suet. *Tib.* 47.1.

¹⁰⁰ Tac. *Ann.* 1.54.2-3: 'ludos Augustalis tunc primum coeptos turbavit discordia ex certamine histrionum.' See also Dio 56.47.2, who states that the reason for the riot was that an actor would not enter the theatre for the stipulated pay.

¹⁰¹ Slater, 129.

¹⁰² Tac. *Ann.* 1.77; Dio 57.14.10; Vell. Pat. 2.126.2; Suet. *Tib.* 34.1.

¹⁰³ Tac. *Ann.* 1.77.1.

¹⁰⁴ Tac. *Ann.* 1.77.4. See also Suet. *Tib.* 34.

¹⁰⁵ Suet. *Tib.* 37.2.

considering the 'immodestia histrionum', claims that the ballet dancers were fomentors of sedition against the state - 'in publicum seditiose.' The Oscan farces, in which the ballet dancers performed, had become so degraded and influential that it required the *auctoritas patrum* (not just the praetors) to restrain it; quarrels connected with the pantomimes were genuinely hard to control, since they could spark off more serious mob actions - 'gravioris motus terrore.'¹⁰⁶ Consequently the *histriones* were expelled from Italy.¹⁰⁷ In the context of Tiberius' measures against city riots Suetonius records the expulsion of the faction leaders as well as the actors who had caused the riots.¹⁰⁸

It is clear, however, that although the authorities felt that the factions were a threat to public order, they never had any particular or consistent political agenda. Cameron, discussing the typology of a faction riot, likens them to the kind of violence one witnesses today in soccer hooliganism.¹⁰⁹ However, a distinction drawn by Wistrand, between the theatre and the arena illustrates that this is too simplistic and naïve a reading and that there were more profound reasons behind the crowd violence at the theatre and the arena. The arena and the theatre were events with completely different social functions. The arena,¹¹⁰ where all kinds of violent entertainment such as public punishment and gladiatorial fights took place, was viewed in a positive light particularly for its educational value.¹¹¹ Here the Roman virtue of *virtus*, could be taught and demonstrated in the form of *fortitudo*, *disciplina*, *constantia*, *patientia*, *contemptus mortis*, *amor laudis* and *cupido victoriae*, even by those who were considered *vilis sanguis*. Here also the power of the Emperor - *numen Caesaris* - could be given full expression. Consequently, unless in radical

¹⁰⁶ Veyne, 393. Tac. *Ann.* 13.25.4.

¹⁰⁷ Tac. *Ann.* 4.14.4: 'variis dehinc et saepius inritis praetorum questibus, postremo Caesar de immodestia histrionum rettulit; multa ab iis in publicum seditiose, foeda per domos temptari; Oscum quondam ludicrum, levissime apud vulgum oblectationis, eo flagitiorum et virium venisse ut auctoritate patrum coercendum sit. Pulsi tum histriones Italia.' See also Vell. Pat. 1.126.2: 'compressa theatralis seditio.' Dio 57.21.3.

¹⁰⁸ Suet. *Tib.* 37.2: 'Populares tumultus et ortos gravissime coercuit et ne orerentur sedulo cavit. Caede in theatro per discordiam admissa capita factionum et histriones, propter quos dissidebatur, relegavit...' See also Dio 54.17.4-5 who writes of one Pylades, a ballet dancer who had been exiled because of sedition. (18 BC).

¹⁰⁹ Cameron, 271ff.

¹¹⁰ Wistrand, 15-29; 56.

¹¹¹ On education as an aim of punishment see chapter 4, p103.

circumstances, the crowd did not protest the violent entertainment provided.

By contrast, ancient writers had great contempt for the theatre.¹¹² The best they had to say for it is that it was *innocua remissio*, but their main objection was its lack of *severitas* and *gravitas*. The theatre epitomised *vitium*.¹¹³ In Livy's words the theatre was a 'vix tolerabilis insania'.¹¹⁴ Suetonius regularly associates the theatre with the absence of order and uses words such as *licentia*,¹¹⁵ *tumultus*,¹¹⁶ *discordia*,¹¹⁷ *seditio*¹¹⁸ to indicate this negative attitude. Wistrand suggests that it was the fact that riots frequently occurred in the theatre which prompted him to have this view.¹¹⁹ But also bound in this is the generally negative attitude the upper class writers had towards the *plebs*. Of the contemporary Tiberian writers Velleius contrasts the theatre with *severitas* and connects it with *seditio*,¹²⁰ while Valerius Maximus presents theatres as places - *urbana castra* - which had regularly witnessed bloodshed.¹²¹ Equally negative vocabulary appears in Tacitus: *immodestia/lascivia/licentia*,¹²² *discordia*,¹²³ *dissensio*,¹²⁴ *seditio*.¹²⁵ Wistrand has compiled a list of negative words which the writers used in connection with the theatre.¹²⁶

Yet it is clear that the theatre was an essential part of Roman social and political life - public amusements were a necessary escape from the horrors of life in Rome,¹²⁷ and as such they functioned as specific mechanisms for social control. Other methods of enforcing social control, such as strong military and police forces, politicised courts and persecution and elimination of dissidents, were an apparatus of coercion and repression, but had a

112 Wistrand, 30-40.

113 Wistrand, 56.

114 Livy. 7.2.13.

115 Aug. 45.4; 'histrionum licentiam.' Dom. 8.3. See also Tac. Ann. 1.77.1. Tacitus uses the phrase *licentia theatri* indicating what his opinion of the theatre was.

116 Tib. 37.2.

117 Tib. 37.2; Cal. 26.4.

118 Nero. 26.2.

119 Wistrand, 35.

120 Wistrand, 36.

121 2.4.1: 'civili sanguine scaenicorum portentorum'.

122 Ann. 1.77.1; 4.14.3; 6.13.2; 13.24.1; 13.25.4; Hist. 1.72.3.

123 Ann. 1.54.2.

124 Ann. 1.77.1.

125 Ann. 1.77.1; 4.14.3; 6.13.1; Hist. 1.72.3.

126 Wistrand, 39.

127 Newbold, 141.

limited efficacy. The ruler had to win the consent of the ruled in order to establish a stable and lasting government.¹²⁸ The arena was a tranquilliser to keep the populace in good humour and well disposed towards its rulers. It was also a place where the might of the emperor could be displayed fully, thereby quelling, through intimidation, any thoughts of rebellion. The games, and the culture which began to build around it, bred and preserved popular indifference to politics.¹²⁹ Moreover the violent entertainment of the arena served perfectly as a means of propaganda and indoctrination of exactly those values the rulers considered fundamental.¹³⁰ So the great and increasing expense of violent entertainment in the arena was justified: legitimacy was won and control achieved. The theatre was a different kind of entertainment altogether in that the violence on display to the crowd was unreal, even if acted with great realism.¹³¹ Nevertheless it was also part of a greater strategy of social control.

Wistrand argues that the Roman authorities in the Early Empire appreciated that the *plebs* felt certain tensions and grievances, and that the current structures available were inadequate. His view is that the more repressive and disciplined a society is, the more necessary it becomes to construct "safety-valves" through which pressure can be released and control can be maintained. Consequently, the Roman authorities wanted the theatre to work as a safety-valve for letting off exactly the right amount of pressure to keep the Roman *plebs* under control.¹³²

How was the pressure released? In practical terms, a demonstration in an arena was far easier to control; its design inhibited the development of a riot. The Colosseum, for

¹²⁸ Wistrand, 63-64.

¹²⁹ Auguet, 150.

¹³⁰ Wistrand, 69.

¹³¹ Suet. *Cal.* 57.4; in the play *Laureolus* understudies so vied with the chief actor in vomiting blood that the whole stage swam in blood. This play was a favourite and may be typical of what the audience liked.

¹³² 71-72. The view that public amusements provided a psychic and political safety valve for the population of the capital is supported by Hopkins, 30. Furthermore, he believes that at the psychological level, the gladiatorial shows provided a stage for shared violence and tragedy. They also gave spectators the reassurance that they themselves had survived disaster. The idea of a "safety valve" to release social pressure was not new to Rome. The tradition of the Saturnalia, in which the roles of master and slave were reversed, recognised the necessity of such a device.

example, had at least fifty exits, placed evenly around the arena.¹³³ Since the *plebs* were usually situated higher up in the arena, it took longer for them to leave the arena and then reassemble so that the riot could proceed. By this time, much momentum would have been lost, and the upper classes (including the emperor), their seats being lower down and closer to the action, would have been able to effect a swift escape.¹³⁴ Demonstrations within the arena were tolerated because they were safe: they posed no threat to the regime, took place in a controlled environment and therefore rarely spilled over into violence.¹³⁵ Even if they did get out of hand, the praetorian cohorts were always ready to prevent a vocal protest from becoming a riot.¹³⁶ Their presence were to become a regular feature of the public amusements.

The different physical arrangement of the theatre is crucial to the understanding of how a theatre riot could come about. The spatial relationships of the theatre fostered tensions more than in other venues in the first century; and this alone is a possible reason why pantomimes, rather than gladiators, were troublesome.¹³⁷ Through the *lex Julia theatralis*,¹³⁸ Augustus had taken great care to organise the seats and places according to the social divisions he was fostering,¹³⁹ so that the theatre became the geometrical symbol of order. The seating of the theatre was intended to 'function as the most evident symbol for the organisation of the Roman people, in that it visibly imposed an almost Platonic order on society in its central meeting place. But it was, like all imposed order, an order that created stress.'¹⁴⁰

¹³³ For the entrances and exits of the circus at Lepcis Magna, the best preserved Roman circus, see Humphrey, 27-28. For the general design of the amphitheatre, especially the entrances, see Auguet, 34, who describes the entry into the amphitheatre as wedge-shaped (*cuneus*) so as to avoid all disorder and to allow the crowd to take their place without inconvenience. It follows then, that such a design would act as a mechanism for natural crowd dispersal when the spectators leave.

¹³⁴ Cameron, 182, briefly discusses the proximity of the palace to the circus. He suggests that this was not to provide the emperor with a quick getaway in the event of a riot, but to make it more convenient for the emperor to enter the circus since he needed to go there so often. However, this was a later development. See Humphrey, 89, 557. Also Auguet, 33.

¹³⁵ Garnsey (1989), 241.

¹³⁶ Garnsey/Saller, 158.

¹³⁷ Slater, 129-130.

¹³⁸ See Rawson (1987).

¹³⁹ Suet. *Aug.* 44.1.

¹⁴⁰ Slater, 144.

Despite the physical dangers to which the emperor was subject in the arena or the theatre, it was nevertheless politically imperative for him to attend. Without his presence there could not be effective communication between the *plebs* and the government. From Augustus on it became normal and common for people to make requests of the emperor at these occasions.¹⁴¹ These requests, to which the emperor was morally bound at least to reply, made publicly in front of a huge crowd of spectators, were not only potentially political, but were also not easy to resist. Here the emperor was answerable to his people. It was here where collective protest was registered. When the trial of Aemilia Lepida (II) was interrupted by the games, she entered the theatre with other distinguished ladies, and called upon her ancestors whose memorials and statues were before everyone's eyes. The response of the crowd was sympathetic and tearful. They howled savage curses upon Quirinus (Aemilia's accuser). It was only because of the revelation of her misconduct by slaves under torture that the crowd behaviour did not gain momentum and become more serious.¹⁴²

Moreover, it was here more than anywhere else where the emperor expected to be cheered.¹⁴³ The games were occasions in which the loyalty of his people could be confirmed and exploited. They afforded the emperor the ideal opportunity to display his *civilitas*,¹⁴⁴ in allowing the crowds to get away with things he would not tolerate in other circumstances. Provided it did not get out of hand, even a hostile demonstration could ease a difficult situation.

The games were a dramatic enactment of imperial power before a mass audience of citizens which helped legitimate the emperor's position. Although there was an inherent risk of subversion and resistance, but the dangers of political confrontation were mitigated by the crowd's lack of coherence, its own volatility and an absence of ideology which could bind

¹⁴¹ For example the demands against the high price of corn in AD 32. Tac. *Ann.* 6.13.1. See also Suet. *Aug.* 42.1, although the context is not clear. Cameron, 162.

¹⁴² Tac. *Ann.* 3.22.1-2. The charge was one of falsely claiming to bear a son to him.

¹⁴³ Cameron, 170.

¹⁴⁴ See Wallace-Hadrill (1982), 32-48.

it together in a sustained programme of action.¹⁴⁵ The emperor knew that he was quite safe at the theatre or the games but that his attendance was nevertheless essential.

What, then, was the nature of mass behaviour at the games? Three factors contributed to the nature of the crowd's behaviour at the games.¹⁴⁶ Firstly, the crowd diminished the sense of individual responsibility and accordingly increased the prospect of group solidarity. In every large gathering the individual loses his identity and becomes an integral part of the mass, as even Seneca recognised in his famous letter about the games. Apart from the snobbish attitude that a crowd must be avoided because of the vice it holds, he explains that the power of a mob is so great that even a Socrates, Cato or Laelius might have been shaken in his principles by a mass of people different from himself. Thus sensitive and easily influenced persons should be protected from the mob, since it is easy to betray oneself and side with the majority.¹⁴⁷ Therefore what an individual would not venture to do, the entire *plebs* would dare collectively.

This leads to the second contributory factor, the feeling of power at a mass gathering. Here the *plebs* were given the confidence which they experienced nowhere else. The circus or arena was the one place where the *plebs* themselves had authority over people's lives through *vertere et premere pollicem*.¹⁴⁸ The *plebs* were boosted by the sense of superiority over those condemned to appear in the arena. Thirdly, there was a tacit agreement among the authorities to tolerate in the arena what they allowed in no other place. The crowd was able to express its opinion frankly without the fear of recrimination, and the emperor was able to ascertain the general feelings of the common people in Rome.¹⁴⁹

By its very nature the theatre, the circus and the arena were places which were likely to stimulate mob violence and demonstration. Yet they were essential to social and political life in Rome. While, on the one hand, they regularly witnessed scenes of violence, on the

¹⁴⁵ Hopkins, 18.

¹⁴⁶ Yavetz (1969), 19-21.

¹⁴⁷ *Epist.* 7.6: 'subducendus populo est tener animus et parum tenax recti: facile transitur ad plures.'

¹⁴⁸ Martial 3.99.

¹⁴⁹ Cic. *Att.* 2.19.3: 'populi sensus maxime theatro et spectaculis perspectus est.'

other hand, they played an efficient role in the achievement of social control, and prevented the possibility of serious rebellion.

THE MECHANICS OF ROMAN MOB VIOLENCE.

How did mob violence manifest itself? Did riots take place in such a way that a pattern can be discerned? In the Late Republic most violent incidents were either politically stage-managed or were purposeful acts springing from the common feeling of a mob; there was a progression from spontaneous to deliberate violence characterized by organisation and planning.¹⁵⁰ I shall assert that there was a reversal of this trend as Augustus made it difficult for organised mob violence to occur. Nevertheless, Roman mob or group violence does show some common denominators which are in themselves revealing.

Firstly, there was collective action in some shape or form. Group solidarity was usually expressed initially by some form of vocal action, mostly in the theatre or arena, where the masses had the best opportunity of assembling. MacMullen describes vividly the scene at the theatre: fifty-thousand 'tossed on waves of enthusiasm, on waves of rhythmic shouts, on storms of applause and excitement, did together what they would never have thought of doing each one by himself: howled, cursed, jeered, and fought in unpredictable outbreaks of passion.'¹⁵¹ This can be positive, such as cheering and clapping, or negative such as booing, hissing or chanting. In one incident Clodius' gang expressed their ill-feeling by spitting in unison - 'signo dato .. consputare'.¹⁵² A crowd can also express itself without any vocal action at all. At a gladiatorial show in 59 BC the showmaster and his guests were overwhelmed with hisses. When Caesar entered the arena the crowd was dead silent, 'mortuo plausu', indicating clearly their disapproval. This was compounded when Curio followed and received a huge ovation.¹⁵³ Another feature of crowd behaviour at the games was the throwing of objects such as scarves into the arena which usually indicated excitement or approval.¹⁵⁴

¹⁵⁰ Lintott (1968), 67-73.

¹⁵¹ MacMullen (1967), 170.

¹⁵² Cic. *Q.F.* 2.3.2.

¹⁵³ Cic. *Att.* 2.19.3-4.

¹⁵⁴ Suet. *Nero* 25 - birds, sweetmeats and ribbons were showered on the emperor. On the regular throwing of clothing into the arena, see Kerr Borthwick (1991), 112. See also, Kerr Borthwick (1972), 1-3.

However, vocal protest does not constitute a riot, but merely a demonstration. When riots did occur, a common feature was damage to property either when a specific building was targeted by the crowd, or when the crowd inflicted damage in order to obtain missiles or weapons such as a broken tile or cobble stone, since the *lex Julia de vi publica* made it illegal to own weapons. The destruction of official buildings in particular was a common goal of a rioting mob. In 52 BC, the senate house was invaded, the benches inside torn down, and set alight. In 31 BC there was fire damage to the circus, the temple of *Ceres*, and a shrine dedicated to *Spes*, the goddess of hope.¹⁵⁵ In 22 BC the senate-house was again attacked, with the crowd threatening to burn down the building and all its occupants.¹⁵⁶ In AD 19 on rumours that Germanicus was alive, crowds ran through the city and broke open temple doors.¹⁵⁷ In the following year the senate-house was again the subject of popular attention as the crowd surrounded it demanding that Piso be delivered to them.¹⁵⁸

The destruction and damaging of the temples to *Ceres*, the goddess of agriculture and to *Spes* which had several temples in Rome, cannot be coincidental or insignificant. In these actions against public buildings and temples, the crowd symbolically expressed the nature of their grievances as well as the extent of their passion and their disaffection with the authorities whom they considered responsible for their predicament. But this was as close the crowd could get to addressing authority directly. The reconstruction of these temples therefore became a matter of important political and symbolic response. In AD 17 Tiberius dedicated certain temples which Augustus had begun to restore when they had decayed or burnt down. The most important of these were the temples to *Ceres* and her associates *Liber* and *Libera*. The temple of the goddess *Spes* was consecrated by Germanicus in the same year.¹⁵⁹ That Tacitus chooses to mention these temples is significant. It is possible that Tiberius was attempting to align himself with his predecessor, both in terms of his

¹⁵⁵ Dio 50.10.3.

¹⁵⁶ Dio 54.1.3.

¹⁵⁷ Tac. *Ann.* 2.82.4.

¹⁵⁸ Tac. *Ann.* 3.14.4.

¹⁵⁹ Tac. *Ann.* 2.49.1-2.

benevolence and his building programme, as well as to reassure his subjects that they would not have any cause in future to indulge in this kind of iconoclastic behaviour.

Stoning and arson, or the use of fire was also a regular feature of riots. This was because these were the weapons most readily available to an angry crowd, and it was the most effective method of inflicting damage. In a single phrase Tacitus described the two major aspects of a Roman riot: 'conglobata multitudo et saxa et faces minante.'¹⁶⁰ Seneca wrote that those who neglect the corn supply to the people would face resistance in the form of 'saxa, ferrum, ignes.'¹⁶¹ In the disturbances for Julia's restoration in AD 4, for example, the crowd threw firebrands into the Tiber.¹⁶² The intention of the crowd in the riots of 22 BC was to burn down the senate-house. That arson was a particular problem is proved by the inclusion of specific clauses relating to it in the *lex Julia de vi publica et privata*, legislation directed against collective violence. It was illegal for anyone in a gathering, assembly, mob or sedition to commit arson.¹⁶³ It was also illegal to remove anything from a fire except building materials or to be present at a fire with a weapon for the purpose of robbery or of preventing the owner from rescuing his property.¹⁶⁴

Since they generally had no weapons with which to commit violence or do damage, the mob to used whatever came to hand. Cobbles, broken tiles, or rocks became missiles to be flung at their targets.¹⁶⁵ Stoning was a common form of group vengeance. Actual or threatened it stains the history of all the chief cities of the empire.¹⁶⁶ The mob was generally unarmed as the poor would possess no weapons in any event, except knives.¹⁶⁷ What is more, the city poor were not trained in the use of arms, as the legions were recruited mainly in the country and not the city. The *lex Julia de vi (publica)* made the possession of weapons illegal except in specific circumstances.¹⁶⁸ The definitions of

¹⁶⁰ Tac. *Ann.* 14.45.1. See also App. *B.C.* 2.126, 5.67ff.

¹⁶¹ Sen. *Brev. Vit.* 18.6.

¹⁶² Dio 55.13.1.

¹⁶³ Dig. 48.6.5.praef: 'qui coetu conversu turba seditione incendium fecerit.'

¹⁶⁴ Dig. 48.6.3.4; Dig. 48.6.3.5

¹⁶⁵ On stoning see Tac. *Ann.* 14.17.1; 14.45.1; Cic. *Verr.* 2.2.119; Dom. 12; App. *B.C.* 2.126; 5.67ff.

¹⁶⁶ MacMullen (1984), 66.

¹⁶⁷ Brunt (1966), 10.

¹⁶⁸ Hunting, or a journey by land or sea: Dig. 48.6.1; Self defence Dig. 48.6.11.2:

weapons (*tela*)¹⁶⁹ and armed men (*armati*)¹⁷⁰ are sufficiently vague so as to include all objects which can inflict damage. This is not to say that the Romans had a systematic policy of disarmament, which Brunt argues was neither practicable nor necessary. What they had was a temporary expedient to be used when there was some particular reason for apprehending disturbances.¹⁷¹ The *lex Julia de vi publica* covered those situations where the possession of arms might lead to seditious violence which threatened public order. When the presence of troops in the city became normal, the risk involved in open riot or demonstration for the urban plebs was that much greater.

There was often a specific target against which the mob could vent their anger. In the case of the emperor, he was often available in the theatre, circus or arena and the mob could air their grievances to him "face to face". The emperor's absence removed this form of manageable protest and caused frustration. When Tiberius left Rome for Capri the populace became extremely agitated. There was also riot at the news of his death. The masses wanted to drag his body off and fling it onto the Gemonian steps.¹⁷² Tiberius' absence from Rome certainly harmed relationships between himself and the *plebs*. The customary direct communication between *plebs* and *princeps* had been removed, and this frustrated them. When an exceptionally destructive fire gutted the Caelian hill in AD 27, the mob considered Tiberius' decision to leave Rome as responsible for the calamity.¹⁷³

The real targets of the mob's frustration were usually impossible to injure or damage because of their inaccessibility. Consequently they suffered only in effigy.¹⁷⁴ The image of the emperor and its desecration was a serious and confusing business in the Early Empire, since the same acts were treasonable at one time but not at another.¹⁷⁵ A statue could offer

¹⁶⁹ 'qui telum tutandae salutis suae causa gerunt, non videntur hominis occidendi causa portare.'
¹⁷⁰ *Dig.* 48.6.11.1: 'Telorum autem appellatione omnia, ex quibus singuli homines nocere possunt, accipiuntur.' See chapter 1.
¹⁷¹ *Dig.* 48.6.9: 'Armatus non utique eos intellegere debemus, qui tela habuerunt, sed etiam quid aliud nocere potest.'
¹⁷² See Brunt (1990), 255-66.
¹⁷³ Suet. *Tib.* 75.1.
¹⁷⁴ Tac. *Ann.* 4.64.1.
¹⁷⁵ MacMullen (1967), 179, writes that this was a trend which became more common in the third and fourth centuries.
 For a full discussion on the desecration of images see Bauman (1974), 71-92. Cf.

temporary sanctuary to those under threat,¹⁷⁶ while physical damage could render one vulnerable to charges of *maiestas*.¹⁷⁷ Suetonius devotes an entire chapter to this kind of iconoclasm.¹⁷⁸ The damaging of a statue was thus the very worst a crowd felt it could get away with. In AD 20, for example, the crowd dragged the statues of Piso to the Gemonian steps and began to destroy them because they were not able to lynch him in person for the suspected assassination of Germanicus.¹⁷⁹ Committing atrocities on corpses also occurred. When Sejanus had been executed, the mob abused his corpse for three days before it was finally thrown into the Tiber.¹⁸⁰

There were times when loss of life occurred. The disorders of 19 BC witnessed murders with the result that the senate voted a bodyguard for the consul of that year.¹⁸¹ In the riots of AD 14 Tacitus records the deaths of soldiers, civilians and a centurion.¹⁸² The riots precipitated by the execution of Sejanus saw the deaths by the crowd of anyone who had been associated with him.¹⁸³ However, the bias of the writers causes them to mention only the deaths of members of the upper stratum, or those who supported it. One can safely assume that when Suetonius writes that Tiberius crushed riots 'gravissime' extensive loss of life was involved.¹⁸⁴

Since the riots of the Early Empire happened spontaneously and in response to specific events which precipitated them, it would be dangerous to postulate any pattern emerging from their occurrence. What trends are apparent, however, are determined not by the

Goodyear (Vol.1), 161-162. The issue had not been resolved by AD 22, and eventually specific legislation came into effect. See *Dig.* 48.4.5-6.
176 See Suet. *Aug.* 17.5; Tac. *Ann.* 3.36.1 and 3. See also Bauman (1974), 85-92.
177 Tac. *Ann.* 1.73.2; 3.70.2; The edict of Cyrene records a man in difficulty because he removed statues from public places which included one of Augustus. See Ehrenberg and Jones, 311.2. Dio (57.24.7) writes of a *maiestas* prosecution in AD 25 for the sale of a statue of Tiberius.
178 Suet. *Tib.* 58. See Goodyear (Vol.1), at 162 doubts the credibility of the whole chapter.
179 Tac. *Ann.* 3.14.4. For post-Tiberian examples, see Dio 59.30.1a, Tac. *Ann.* 14.61.1, Dio 62.16.2a.
180 Dio 58.11.1-6.
181 Dio 54.10.1.
182 Tac. *Ann.* 1.77.1.
183 Dio 58.12.1.
184 Suet. *Tib.* 37.2: 'populares tumultus et ortos gravissime coercuit et ne orerentur sedulo cavit.'

actions of the mob itself, but by the limitations imposed on it by the state in response to, or anticipation of, instances of collective violence. These limitations, to a large extent, defined the course of action of the mob, as well as revealed the attitude the state had towards it.

EXECUTIVE RESPONSE TO COLLECTIVE VIOLENCE.

The reply by the *princeps* was both reactive and proactive. Augustus' reforms, both political and administrative, had a significant impact on the limitation of mob violence. It is therefore possible to interpret them as measures designed, in part at least, for that purpose. The greater intention was, of course, the entrenchment of his position as first citizen of Rome. In this context, it is helpful to return to Tilly's five components of a demonstration and investigate how the executive of Rome managed to neutralise each one.

Much of the emperor's reaction to mob violence must be gauged against the background of his relationship with the *plebs*. Augustus realised that to make an enemy of the masses would be a serious political mistake. He had to attain not just legitimacy with them in order to make his position safe. By acting as patron to the masses the emperor was well placed to identify their needs and interests and cater for them accordingly. In the *Res Gestae* Augustus seized the opportunity to celebrate posthumously the staggering scale of his benefits and services to the Roman people.¹⁸⁵ The control of the corn supply, the provision of games, better services such as water and housing, as well as occasional distributions of considerable sums of money to all male citizens of Rome, were all manifestations of the *princeps* as the great benefactor of the *plebs*. The emperor who plays the role of great patron well, writes Seneca, requires no military guard as he is protected by his benefits - 'hic princeps suo beneficio tutus nihil praesidiis eget'.¹⁸⁶

More importantly, as universal patron the *princeps* was able to free the common people from the *clientela* of the aristocratic families and bind them to himself to the greatest possible extent,¹⁸⁷ and eliminate political competition from upper-class patrons who sought

¹⁸⁵ 15-18.

¹⁸⁶ *Clem.* 1.13.5.

¹⁸⁷ Yavetz (1969), 96.

to mobilize their support through patronage. This aspect must not be overemphasised, however. While pointing out that the traditional patronage system failed to cope with the problems of mob violence, starvation and land hunger, and that this system was under attack, the emperor did not become universal patron in the sense of sole patron in the Roman world. Nevertheless he caused a profound transformation in the overall system by eliminating the competition in the distribution of resources which belonged ultimately to the *populus Romanus* - the clients: 'There is no longer a vote, and ultimate control of public resources passes *de facto* to the emperor. Thus the network of patronage realigns, and all strands converge at the centre.'¹⁸⁸ Therefore, when the plebs did resort to violence it was to remind the emperor of his responsibilities as patron.

Furthermore, the role of patron enabled Augustus to usurp for himself the role of possible leader or champion of the masses. Through this role both organisation and mobilisation of the masses is minimised and even controlled. This was consolidated in 23 BC with Augustus' acquisition of the tribunician power. Anyone who challenged him for his position had no constitutional or political basis to do so. Such a challenge would not be merely one of leadership, but would, in effect, constitute an act *contra rem publicam* and would therefore be treasonous.

The control and elimination of possible elements around which a crowd could be mobilised and organised was of particular concern to the *princeps*. Rulers knew and realized the dangers of an organised and motivated crowd. Livy has Scipio express the sentiments which each member of the ruling class must have shared: 'multitudo omnis sicut natura maris per se immobilis est, at venti et aurae cient; ita aut tranquilla aut procellae in vobis sunt; et causa atque origo omnis furoris penes auctores est; vos contagione insanistis.'¹⁸⁹ A well-managed crowd is a docile one. But a crowd could easily be swayed by the rhetoric of a rabble rouser. At theatrical events there were people trained in orchestrating the actions of the audience. Percennius, the instigator of the Pannonian mutiny was one such individual - 'dux olim theatralium operarum...procax lingua et miscere coetus histrionali

¹⁸⁸ Wallace-Hadrill (1989), 78-81.

¹⁸⁹ Livy. 28.27.11-12.

studio doctus' - who applied his talents to fomenting violence.¹⁹⁰

But this was an exceptional case. Of far greater concern in the security context were the *collegia* which had a history of group mobilisation. It was natural that members of the urban lower strata organised themselves in these associations which, among other benefits gave their members a certain corporate identity. They had elected officers, respectable aims, limited membership, and legal status. However, in the late Republic they came to be used as a clandestine means of mobilizing a political force. Some *collegia* were implicated in the riots of the 60s BC, and in the 50s Clodius' exploitation and control of these associations meant that he was able 'to recruit men for violence and other political purposes on a much wider scale than anyone before him had done and with a greater degree of organization.'¹⁹¹ It is hardly surprising, then, that the emperors remained suspicious of such plebeian organizations as seed-beds of undercover political activity even though they had achieved some respectability because of their long histories in the special public services. In the late Republic there were attempts to control them which Augustus continued in the Principate. Caesar had dissolved all *collegia* except those of long-standing.¹⁹² Apparently they reemerged. Augustus' *lex Julia de collegiis*, which is imperfectly known, provided that all clubs should obtain a licence, and that they should meet no more than once a month. In a chapter dealing with the suppression of crime, Suetonius writes that societies 'titulo collegi novi ad nullius non facinoris societatem coibant'.¹⁹³ Augustus' reaction was to dissolve them 'praeter antiqua et legitima'. This was the emperor's dilemma. The size of some of the *collegia* necessitated that they be given some recognition. Yet it was difficult to know the real extent of their mischief. Consequently, legislation against the *collegia* continued until well into the Empire with a clear purpose: 'prohibendarum factionum causa de providentia constant modestiae publicae ne civitas in partes scinderetur.'¹⁹⁴ Moreover, violation of the laws against *collegia* had very serious consequences.¹⁹⁵

¹⁹⁰ Tac. *Ann.* 1.16.3.

¹⁹¹ Lintott (1968), 82.

¹⁹² Suet. *Caes.* 42.3.

¹⁹³ *Aug.* 32.1.

¹⁹⁴ Tert. *Apolog.* 38.1f.

¹⁹⁵ The *lex Irnitana* (chap. 74) provides that anyone who holds a meeting for the

There were also short-term measures taken by the authorities in response to situations which might flare up into crowd violence. The resolution of the food crises entailed more than the finding and supplying of supplementary grain. During the crisis of AD 6-7, the mob clamoured for more despite the doubling of the corn dole. Other *ad hoc* measures had to be taken specifically to prevent the occurrence of violence. A simple strategy was to expel from the boundaries of the city those who were, or might become *agents provocateurs*, and those who would make life particularly difficult for the authorities should violence occur. This is what Augustus had in mind when he expelled gladiators and slaves to be put up for sale to a distance of 100 miles from the city.¹⁹⁶ Gladiators were men skilled in arms who could easily turn their talents to revolution for the right price. Suetonius adds that all foreigners except doctors and teachers were also expelled.¹⁹⁷ To have armed trained men in the city at such a critical time was a risk Augustus simply could not take. The same thinking was behind the expulsion of the Germans and Gauls who were part of the Praetorian Guard in AD 9. He feared that they might start an uprising after the Varus disaster.¹⁹⁸

Astrologers and philosophers were also considered potential instigators of violence and were similarly removed from the city.¹⁹⁹ In AD 16, for example, the senate expelled astrologers through a *senatus consultum* in order to secure public order.²⁰⁰ Actors and ballet-dancers were also viewed with some suspicion and they were, on occasion, banned. In AD 23, Tiberius prohibited the performances of the Oscan farces and expelled actors

purpose of illegal gatherings, societies and colleges is liable to a fine of 10 000 *sesterces*. Considering the average daily wage of three *sesterces*, this was certainly severe punishment. González, 223-4, comments that the only thing actually banned is a *coetus* and not the *collegia* themselves. *Collegia* are banned only insofar as directed towards a *coetus*.

¹⁹⁶ Dio 55.26.1.

¹⁹⁷ Suet. *Aug.* 42.3.

¹⁹⁸ Dio 56.23.4.

¹⁹⁹ See Dio 52.36.3: '....the practitioners of magic should be forbidden to carry on their craft. For such men, who occasionally speak the truth, but generally falsehood, often incite many of their followers to attempt revolutions. The same applies to many who claim to be philosophers.'

²⁰⁰ Tac. *Ann.* 2.32.3; Dio 57.15.8-9. See also Suet. *Tib.* 36; Ulpian *Coll.* 15.2.1. See also Goodyear's discussion (Vol. 2) at 284-5. Generally see MacMullen (1967), 46-162.

from Italy.²⁰¹ Earlier measures to contain the actors had proved ineffective.²⁰² In Suetonius' chapter on the control of riots, he writes of Tiberius' expulsion of both the faction leaders and actors who had been the source of the trouble.²⁰³

Another method of responding to collective violence was to legislate against it. This has already been discussed in chapter two. But in this context two things need re-affirmation. Firstly, the laws against violence, in particular the *leges Juliae de vi*, tell us more about the attitude and the approach of the authorities to the problem and to some extent about how mob violence occurred, than about their efficacy. Secondly, that the sources do not present us with many records of successful prosecutions according to Lintott²⁰⁴ 'proves that its value depended on the previous repression of violence by executive means and the resulting atmosphere of security.'

The most obvious response to crowd violence, however, was simple repression and although there is not much detailed record in our sources, it must have been the most common method. We know that Tiberius did not tolerate riots at all and quelled them 'gravissime'.²⁰⁵ Where, in the Republic the use of troops in the city was eschewed, in the Principate the establishment of forces whose specific brief was the maintenance of order, created no such unease. The officers in control of these forces were given mandates to deal with disturbances as they saw fit. The duties of the Praetorian Prefect entailed authority with a view to procuring improvement in public discipline.²⁰⁶ The *praefectus urbi* was charged with keeping the peace among citizens and maintaining order at public spectacles. In this he was given a force of military guardsmen as well as powers of expulsion.²⁰⁷ Nevertheless, it is important to note that the emperor had forces available which owed their loyalty to him alone, and were ready to act, ruthlessly if need be, against any crowd violence. Through their prominence in the city they acted as a major deterrent to crowds

²⁰¹ Tac. *Ann.* 4.14.4. Dio 57.21.3; Vell. Pat. 1.126.2. See footnotes 107 and 108.

²⁰² Tac. *Ann.* 1.77.1. These were measures to empower the praetors to have them flogged. See p 18-19

²⁰³ Suet. *Tib.* 37.2.

²⁰⁴ Lintott (1968), 123.

²⁰⁵ Suet. *Tib.* 37.2.

²⁰⁶ Dig. 1.11.1.praef.

²⁰⁷ Dig. 1.12.1.12-13. This has been discussed in the previous chapter.

who may have been frustrated, but were unarmed, unorganized and therefore ill-equipped to take on the power the emperor had at his disposal. This prominence and "high visibility" was achieved through sheer force of numbers - there was one soldier for every fifty citizens,²⁰⁸ different and noticable dress in the case of the urban cohort or the *vigiles*,²⁰⁹ and positions of high profile (in the case of the praetorian guard) when the emperor had to appear in front of the public at the games or at the theatre. The mob was constantly reminded of the emperor's might, and that to challenge it was a risk not worth contemplating. This threat of force was, as Griffin notes, generally enough to control plebeian riots.²¹⁰

CONCLUSION.

The occurrence of collective violence in the Early Empire is remarkable for its infrequency given the nature of socio-political conditions at the time. Equally remarkable are the steps, both proactive and reactive, which the emperor took to prevent, minimise, regulate or control it and which appear to be disproportionate to its frequency and intensity. This is some indication of the sensitivity the emperors felt towards the possibility of its occurrence and its significance. Much of the issue entails the question why there was no political rebellion at a time when a *de facto* monarchy was being established, and much of the answer concerns the specific relationship between the emperor and his plebeian subjects. Nevertheless, mob violence did occur, but where in the Republic it was initiated, organised and orchestrated by political leaders with ambitions of power, in the Early Empire it appears more spontaneous, in response to specific events - usually food crises, and had specific but non-political objectives in mind. The Early Empire saw the introduction and perfection of mechanisms which would anticipate and indulge these objectives without compromising the emperor's position. In order to limit crowd violence, the emperor had to identify and accommodate the *plebs'* needs.

²⁰⁸ See chapter 5, p148-149.

²⁰⁹ See chapter 5, p152.

²¹⁰ Griffin (1991), 40.

CHAPTER SEVEN

CONCLUSION

In many respects the provisions against violence which evolved during the course of the Principate, were a direct response to the violence which had occurred during the Late Republic. It would be wrong however, to suggest that the violence of the Late Republic caused the evolution of the Principate. The Republic had been in crisis for a long time, and the violence of the Late Republic and the civil wars which followed merely signalled the inevitable; that there could be no return to the political structure of the Republic no matter how much it was desired. This realisation intensified on the part of the historians an idealism of the Republic which was not always justified. It was an idealistic depiction which has complicated any realistic assessment of the Principate because of the historians' bias against "monarchy." Consequently the administrative measures introduced by the Principate, many of which had a positive and far-reaching impact on the limitation of violence, were viewed by the historians as products of a selfish and decadent "monarchy."

The study of violence in the early years of the Principate is justified if only because of the proximity in time to the Republic of the reigns of Augustus and Tiberius. Augustus had introduced particular measures which, by Tiberius' reign, had established themselves as trends. Many of these measures were introduced to stabilise Roman politics and society and to secure the *princeps*' position in power. A by-product of these measures was that they provided a new context, or "set of rules" in which violence (particularly institutionalised state violence) could take place, be monitored and controlled.

This has been the main endeavour of this thesis: to establish what this context was and examine it against the background of a new political regime - the Principate. It has not been the intention of this study to suggest that the early Principate was more, or less violent than the Late Republic. That is a pointless and unproductive exercise. Rather what I have attempted to explore, is the response by the new "government" to violence, whether reactive or proactive and to show that this response, characterised by the new political and administrative structures, was to last far into the Empire.

The quality of these structures and the changes to which the existing Republican structures were subject had a particular impact on the nature of violence of the Early Principate. In the first place, there were attempts to legislate against violence during the Late Republic, when the situation became so serious that legislative action was required. These attempts proved ineffective, as the history of the legislation reveals. I have argued that this legislation against violence reached final refinement in 18 BC in the *lex Julia de vi*. But even here, we are unsure of its effectiveness, since we know of only one person, one Vibius Serenus, who was charged under its provisions.

However, the *lex Julia de vi* has left us with a very clear indication of how the Roman authorities, controlled by the emperor, defined and conceived of violence. Along with an examination of the concept of violence in the works of Cicero (as expressed by the Latin word *vis*) I have attempted to discover a contemporary Roman attitude to violence without which the conclusions reached in this study would have been misleading and inaccurate. In this regard, we must recognise that the Roman attitude to violence was sophisticated and intelligent. The Romans appreciated its subtleties and contradictions; for instance that ultimately the fundamental sanction against violence must necessarily be violence itself. Cicero realised the social dangers inherent in *vis* as a socio-political concept to be directly contrasted with *ius* which represented the legitimate workings and structures of the state; something which has come across clearly in the *lex Julia de vi*. In this regard, he argued that violence is a political instrument to be used when all else fails in order to protect the security of the state - in whatever way the state should define itself.

This notion of state security, is of great importance in an investigation into violence especially when considering the new system of government of the Principate. It was, as I have argued, due to state security that these measures for the control of violence were introduced. Against this background a new law (again produced in the Late Republic and refined in the Early Principate) offered the state (embodied in the *princeps*) an opportunity to combat political violence effectively. The *lex maiestatis* was, initially at least, not used that much to remove political rivals from the scene. However, as the reign of Tiberius

progressed, and as the politics of the Principate took shape, the *lex maiestatis* became a means by which senators or *delatores* could win favour with the *princeps*; a method by which political threats could be removed even without there being any evidence for it; and a way in which citizens (mostly of the upper stratum) could be intimidated into subjection. Consequently, the atmosphere of free political activity of the Republic which was so fondly celebrated by the historians of the empire, was impossible.

The implications of this for an investigation into violence are obvious. It would suggest that such an atmosphere would be fertile ground for revolution and unrest. Yet no such revolution transpired. It has been one of the aims of this thesis to find out why. One answer lies in the fatigue and demoralisation (particularly on the part of the lower strata) after the crises and trauma of the Late Republic and Civil war. However, I have tried to show that a more complete answer is to be found in the nature of the Principate as government and measures and structures erected to support and secure it. Many of these measures, it is true, were designed to act, or to give the *princeps* the space and legitimacy to act, as effective mechanisms of oppression. Riots, when they occurred, were dealt with ruthlessly. The state now had the capacity, the means and the resources to crush resistance should it occur. But revolution was controlled in a more subtle manner too. The *princeps* took great care to control violence by seeing to the welfare of his subjects. New services were provided. Rome now enjoyed the benefits of an efficient fire-brigade - the *vigiles* - under the control of the *princeps* alone. An adequate corn dole was supplied, again under the direct supervision of the *princeps*. The amusement of the people became an essential aspect of the *princeps*' duties. We witness, for example, in the first century of the Principate, the growth and monopoly of the "entertainment industry" by the *princeps*. The arena, theatre or circus became a place where political communication could take place between ruler and subject without the danger of rebellion or violence. It was also an opportunity for the *princeps* to advertise his glory and might and act as grand patron of his people. But most of all, they served (as I have argued) as a "safety valve" which allowed the people to "let off steam" in a manner in which they would never have done normally.

As I have stressed, these measures were not all designed specifically with the control of violence in mind. Most of them, in fact, were instituted in reaction to the social, political and administrative demands of the time. *Cognitio* evolved, rather than was instituted, because the Republican system of criminal justice had proved inadequate, expensive, slow, unreliable and prone to corruption. The principle of self-help, so long an integral part of dispute resolution in the Republic, had become redundant and dangerous. The *cognitio* system attempted to remedy these faults. But it was a remedy which had its own dangers. It was responsible for Roman criminal justice becoming more inquisitorial in character, where in the Republic the jury court system was accusatorial. Consequently, the judge played a more active role since he had the right to call witnesses and interrogate the accused, something which was forbidden him in the Republic. This flexibility meant that cases were more speedily resolved, but often at the price of justice in the form of arbitrary decisions, and judgement determined not by the vote of a jury but by the subjective whim of a single judge.

What the *cognitio* system represented most, however, was a substantial penetration by the state into the lives of its subjects. This expressed itself in the development of three new courts which had significant effect on social control. The senatorial court blurred the line between political body and court; when the emperor sat as judge, it was rare that legal considerations were the sole issue in the resolution of cases, especially in political matters. One could hardly expect the *princeps* to be an objective assessor, and reach a decision detrimental to himself; the court of the urban prefect was jurisdiction delegated by the *princeps* to the urban prefect who was accountable to the *princeps* alone. Powers were given to the urban prefect to try offenders and punish them accordingly. In all three instances, including Imperial jurisdiction, there was greater room to compromise justice as well intrusion into, and control over, the lives of Romans.

A further result of the *cognitio* system was that it also gave judges greater discretion in punishment. This is the area in which the state inflicts legitimate violence on its citizens. I have argued that the Early Principate witnessed a trend towards more severe punishments

which reflects the political situation of the time. This trend manifested itself not only in the increased severity of the various punishments, but also in the development of a complex system of symbol and ritual which accompanied their execution. Through these rituals and symbols the punishments, which occurred in the context of specific penal aims, reflected a society which, in the Republic, was allowed to participate, rather new ways evolved.

The security and legitimacy of the state was also secured through the creation of three new forces, of a military or para-military nature, during the Principate. Where, in the Republic the presence of troops in the city was vigorously eschewed, in the Principate the high visibility of the Praetorian guard, the urban cohorts and the *vigiles* proclaimed the might of the emperor and advertised the futility of defiance. With these forces riots in the city, the arena, the circus or the theatre were mercilessly quelled and that the *princeps* secured his position. The riots which did occur, however, sprang usually in response to a specific issue, whether it was political, social or economic. The *princeps* had formed a successful strategy to deal with them.

During the reigns of Augustus and Tiberius, the response to violence was more effective than during the Late Republic. Both emperors had the benefit of the experience of the Late Republic to draw from. It was an experience neither emperor wanted to be repeated. The quality of their government was influenced but not dominated by this consideration. There has been much scholarship on the subject of violence in the Late Republic. The issue of violence in the Early Principate has not received much attention. One cannot state with conviction that the one period was less violent than the other. But what one can say, however, is that the context for violence under the Early Principate was completely different. In many ways, it was more difficult for violence to occur since there had been various structures established for its control, monitoring and even accommodation. On the other hand the Early Principate allowed greater scope for state violence to be inflicted on its subjects.

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